



Planning and Land Use Services

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

Date: 02/06/2023
To: Zoning Board of Appeals
From: Billy Saad
Land Use Specialist
RE: Staff Report for 02-09-23 ZBA Meeting

I. APPROVAL OF THE MINUTES:

- January 12, 2022

Staff reviewed the minutes. We recommend approval.

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

Pg 14-348

37-21 Kristina & Nicholas Amendolare
Sitting: SM, LB, MO, EA, JM

8 Bank Street

Williams

Applicants are seeking Special Permit relief pursuant to Nantucket Zoning Bylaw Sections 139-30 and 139-33A 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).

The applicant has submitted a Test Pit Report on pages 16-24 and floor plans on pages 25-27 of the packet. Multiple letters in opposition were received and are included in your packet, starting on page 166.

09-22 Harris on Weweeder, LLC
Continued to March 9, 2023

50 Weweeder Avenue
Sitting: SM, EA, MO, GT, MP

Brescher

20-22 Steven L. Cohen & Christopher P. Choma, Trs. 29 Monomoy Rd Nominee Trust,**Cohen***Sitting: SM, LB, EA, JB, JM*

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).

No new information has been submitted.

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

10-22 Paul P. Moran & Jean M. Moran**4 Washington Ave****Santos***Continued to March 9, 2023***17-22 Nantucket Cottage Hospital****16 Vesper Lane****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 524– 525 of the packet), the Applicant has made a compelling argument as to why Variance relief may be granted.

19-22 Pacaso, Inc**11A Meadow Lane****Panebianco***Requests to Withdraw without Prejudice*

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).

01-23 & 03-23 Cueto, Francis E., Trustee of FAO Nominee Trust 23&29 Orange St**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).

The Applicant proposes to modify previous Special permits to alter the shared lot line between 23 and 29 Orange Street. The proposed plan is in your packet on pages 386 & 411. This altered lot line will result in an increased ground cover ratio for lot one (1) (23 Orange) and will exceed the current max ground cover ratio of 40% within the Residential Old Historic Zoning District. The pool will not change location, but the lot line adjustment will place the pool on lot two (2) (29 Orange) and requires relief pursuant to Section 139-7 – Use chart; Prohibited use of a pool in the ROH district.

If the Board is inclined to approve the application, the finding the Board would need to make (established locally by Section 139-33(1)A) which requires that the Board:

[...] finds that such extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure and/or use to the neighborhood. Where an existing structure violates a front, rear, or side yard setback distance, the special permit granting authority may issue a special permit to allow an extension, alteration, or change to the structure, provided that the nonconforming setback distance is not made more nonconforming and based upon a finding that the extension will not be substantially more detrimental to the neighborhood than the existing nonconformity.

Staff recommends modifying the previous Special Permits to accommodate the new address of the pool at 29 Orange Street and allow for the ground cover ratio to exceed the 40% maximum allowable at 23 Orange Street. Both properties are considered preexisting nonconforming, and the minor lot line adjustment does not change the location or dimensions of the structures as they currently exist.

Pg 420-436

02-23 7 Laurretta Lane LLC 7 Laurretta Lane

Cohen

Applicant is requesting interpretation of MGL Ch. 40A Section 3, and alternatively relief by Variance pursuant to Zoning By-law Section 139-32, to validate the existence of a solar array within the side yard setbacks, as close as 19.8 feet to the western lot line and 1.9 feet to the eastern lot line. The property is located at 7 Laurretta Lane, shown on Assessor's Map 4 as Parcel 53 and as Lot 67 on Land Court Plan 16220-Z. Evidence of owner's title is registered on Certificate of Title No. 28835 at the Nantucket County District of the Land Court. The site is zoned Limited Use General-3 (LUG-3).

The applicant is seeking variance relief pursuant to Section 139-32, to validate a solar array currently sited within the 20' setback in the LUG-3 zoning district. The solar array in question was constructed in 2019 with HDC approval # 73039 and building permit # BLDR2019-11-0095. The building permit was completed on 10/26/2020, a copy of which is in your packet on paged 431 - 432. Email correspondence between the ZEO and the applicant's representative regarding the pre-construction placement of the solar array is in your packet on page 430. At the time the permit was obtained and closed out, the ZEO's interpretation of MGL 40A section 3 was "All care should be taken to locate a solar array within the buildable area of the property, but an array located within a setback area is not currently considered a zoning violation".

The finding the Board would need to make to meet the threshold (established by MGL 40.A § 10 and locally per Section 139-32.A) which requires that the Board:

[...] specifically finds that owing to circumstances relating to soil conditions, shape or topography of 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 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 recommends approval. The Building Department's interpretation has changed, and due to the change, any proposed solar array that encroaches on yard setbacks requires relief from the ZBA. The Building Commissioner will be present at the meeting and supports the requested relief as the solar array was completed and approved prior to the change in interpretation.

Pg 437-478

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).

Applicants are requesting a Variance to validate the Lots located at 37 & 39 Chuck Hollow Road, as separately marketable and buildable. 37 Chuck Hollow Road is unimproved with approximately 65,775 sf of lot area. 39 Chuck Hollow Road is improved with a single-family dwelling, containing approximately 1,607 sf of ground cover on a lot that contains approximately 65,775 sf of lot area. Both lots are undersized for the zoning district with a minimum lot size of 120,000 sf. However, the undersized lots are consistent with the sizes of other neighboring, see page 489 of the packet. Both lots are shown as lots 602 and 603 on Land Court Plan 54004-25 on page 498 in your packet.

The subject lots have been held in common ownership since 1973, and the current owner has had title to both lots since 1980. Under the Zoning Bylaw, the two lots would have merged for zoning purposes because one lot is undeveloped, and the other lot contains a dwelling. Staff researched as far back as 1983 and found previously granted Variances for similar requests. The bulk of the Variance requests taking place in Tom Nevers was found between 1986-1987 with six (6) Variances granted. Copies of the decisions are attached at the end of the staff report. Staff did not find any denials pertaining to this Variance request, and no opposition from an abutter was received.

If the Board is inclined to approve this request, the finding would need to meet the threshold (established by MGL 40A § 10 and locally per Section 139-32.A) which requires that the Board:

[...] specifically finds that owing to circumstances relating to soil conditions, shape or topography of 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 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.

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 37 Chuck Hollow Road. Locus is situated at 39 Chuck Hollow Road, shown on Assessor's Map 75, Parcel 109 and as Lot 603 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).

See 04-23, 37 Chuck Hollow Road

IV. OTHER

V. ADJOURNMENT (VOTE WILL BE TAKEN)

PREVIOUS DECISIONS FOR 23 & 29 ORANGE ST



TOWN OF NANTUCKET RECEIVED
BOARD OF APPEALS
NANTUCKET, MASSACHUSETTS 02554
NOV 15 PM 3 40
NANTUCKET TOWN CLERK

Date: November 15, 2013

To: Parties in Interest and Others concerned with the Decision of
The BOARD OF APPEALS in the Application of the following:

Application No: 072-13

Owner/Applicant: Francis E. Cueto, Trustee of the
FAO Nominee Trust

Enclosed is the Decision of the BOARD OF APPEALS which has this
day been filed with the office of the Nantucket Town Clerk.

An Appeal from this Decision may be taken pursuant to Section 17
of Chapter 40A, Massachusetts General Laws.

Any action appealing the Decision must be brought by filing a
complaint in Land Court within TWENTY (20) days after this day's
date. Notice of the action with a copy of the complaint and
certified copy of the Decision must be given to the Town Clerk so
as to be received within such TWENTY (20) days.



Eleanor W. Antonietti,
Zoning Administrator

cc: Town Clerk
Planning Board
Building Commissioner/Zoning Enforcement Officer

PLEASE NOTE: MOST SPECIAL PERMITS AND VARIANCES HAVE A TIME LIMIT
AND WILL EXPIRE IF NOT ACTED UPON ACCORDING TO NANTUCKET ZONING
BY-LAW SECTION 139-30 (SPECIAL PERMITS); SECTION 139-32
(VARIANCES). ANY QUESTIONS, PLEASE CALL THE NANTUCKET ZONING BOARD
OF APPEALS OFFICE AT 508-228-7215.

NANTUCKET ZONING BOARD OF APPEALS
2 Fairgrounds Road
Nantucket, Massachusetts 02554

Assessor's Map 42.3.2, Parcels 68 and 69
29 Orange Street
R-OH

Book 1391, Page 257

DECISION:

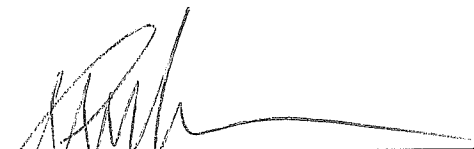
1. At a public hearing of the Nantucket Zoning Board of Appeals, on Thursday, November 14, 2013, at 1:00 P.M., at 4 Fairgrounds Road, Nantucket, Massachusetts, the Board made the following decision on the application of **FRANCIS E. CUETO, TRUSTEE OF THE FAO NOMINEE TRUST u/d/t dated 2/1/2012 recorded at the Nantucket Registry of Deeds in Book 1218, Page 129**, c/o Vaughan, Dale, Hunter, and Beaudette, PC; 2 Whaler's Lane, PO Box 659, Nantucket, Massachusetts 02554, File No. 072-13:
2. Applicants are requesting Special Permit relief pursuant to Nantucket Zoning Bylaw Section 139-33.A.(3)(a) (alteration of preexisting nonconforming structures) in order to add two small additions to the north and south side of the existing dwelling within the buildable portion of the Property. The dwelling on the property was constructed prior to the adoption of the Nantucket Zoning By-Law and is pre-existing nonconforming with respect to the zoning regulations in the Residential Old Historic (R-OH) Zoning District. More specifically, the dwelling is 2.9 feet from the southerly side yard lot line where a five (5) foot side yard setback is required and has a height in excess of the maximum of 30 feet which the Zoning By-Law requires. The Locus is situated at 29 Orange Street, is shown on Nantucket Tax Assessor's Map 42.3.2 as Parcels 68 and 69, and evidence of owners' title is recorded at the Nantucket Registry of Deeds in Book 1391, Page 257. The site is zoned R-OH.
3. Our decision is based upon the application and accompanying materials, representations, and testimony received at our public hearing. There was no Planning Board recommendation on the basis that no matters of planning concern were presented. There were no letters in favor of, or in opposition to, the application.
4. Attorney Richard Beaudette represented the Applicants. Attorney Beaudette explained to the Board of Appeals that the Applicants are requesting Special Permit relief pursuant to Nantucket Zoning Bylaw Sections 139-33.A.(3)(a) in order to add two small additions to the north and south side of the existing dwelling within the buildable portion of the lot.
5. Therefore, after a discussion with the agent for the Applicants, the Board finds that such a Special Permit for relief sought by the Applicants pursuant to Nantucket Zoning Bylaw Section 139-33.A.(3)(a) in order to add two small additions to the north and south side of the existing dwelling within the buildable portion of the lot would not increase the nonconforming nature of the existing structure on the lot because the proposed work will be located in the buildable portion of the Property, will not create any new nonconformities, and would be in harmony with the general purpose and intent of the Zoning Bylaw.

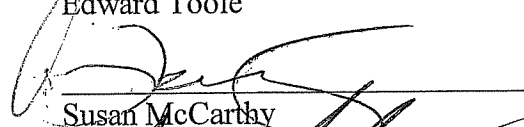
6. Accordingly, by a UNANIMOUS vote of the sitting Board, the Board of Appeals grants a Special Permit for the relief sought by the Applicants pursuant to Nantucket Zoning Bylaw Section 139-33.A.(3)(a) in order to add two small additions to the north and south side of the existing dwelling within the buildable portion of the lot subject to the following conditions:

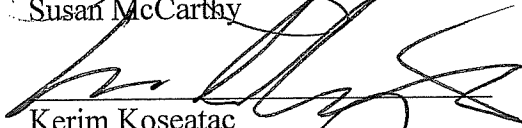
- a. That the proposed work shall be in accordance with the site plan entitled "Cueto Residence 29 Orange Street Nantucket, MA 02554", dated September 4, 2013, prepared by *Botticelli & Pohl Architects*, a copy of which is attached hereto as "Exhibit A";
- b. That there shall be no exterior construction for the proposed work, including the exterior use of power tools for interior work or for hardscaping, between Memorial Day and Labor Day of any year.

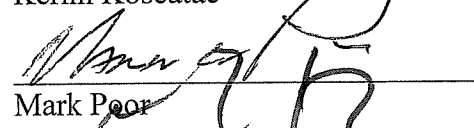
SIGNATURE PAGE TO FOLLOW

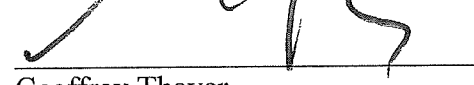
Dated: November 14, 2013


Edward Toole


Susan McCarthy


Kerim Koseatac


Mark Peor

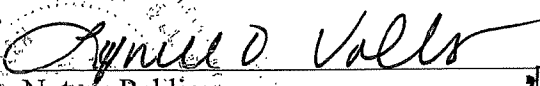

Geoffrey Thayer

COMMONWEALTH OF MASSACHUSETTS

Nantucket, SS
November 14, 2013

On the 14th day of November, 2013, before me, the undersigned notary public,

personally appeared Edward Toole, one of the above-named members of the Zoning Board of Nantucket, Massachusetts, personally known to me to be the person whose name is signed on the preceding document, and acknowledged that he/she signed the foregoing instrument voluntarily for the purposes therein expressed.


Notary Public:

My Commission Expires December 28, 2018

LYNELL D. VOLLANS

Notary Public

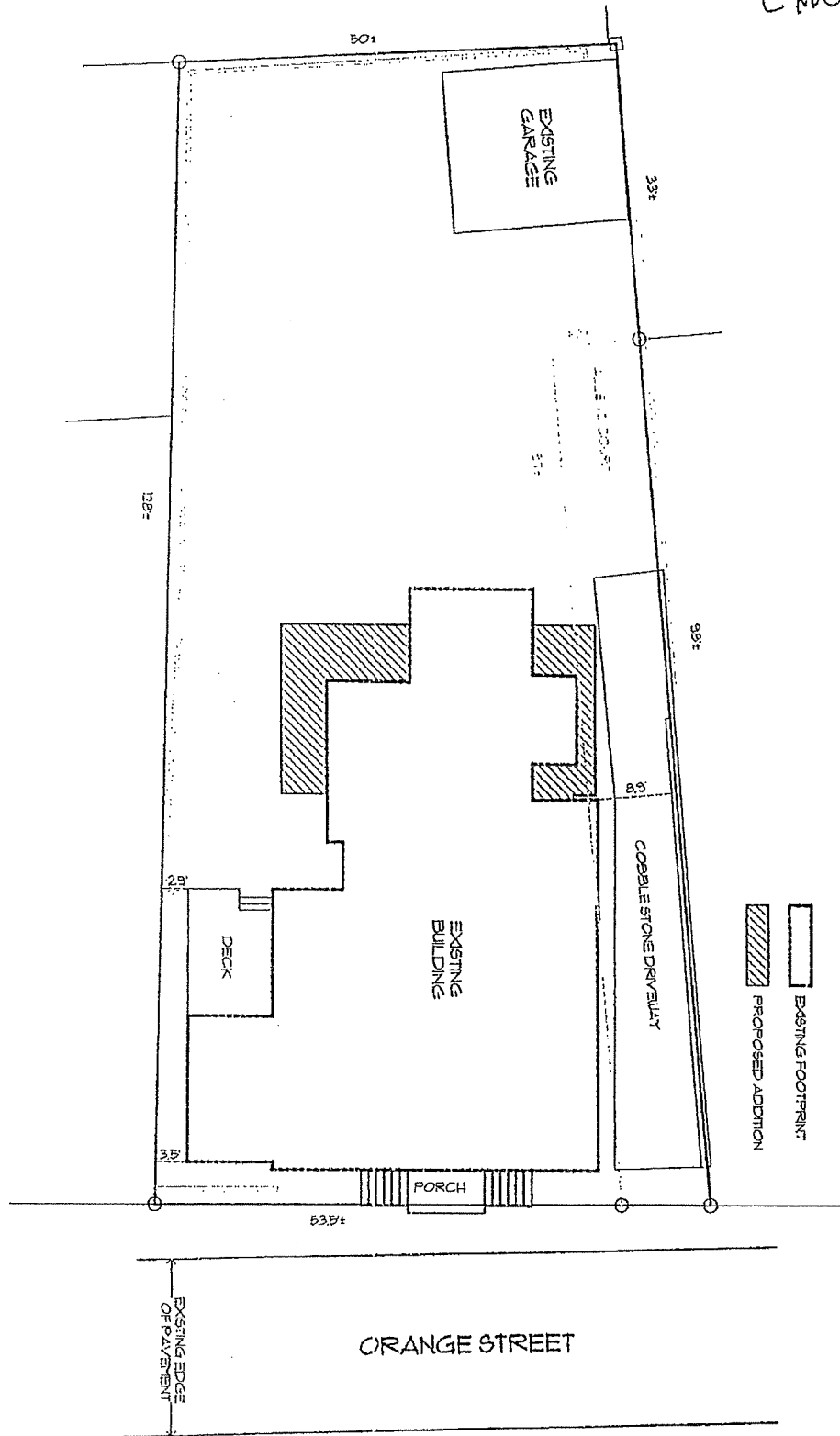
Commonwealth of Massachusetts

My Commission Expires

December 28, 2018

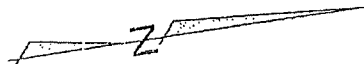
LYNELL D. VOLLANS
Notary Public
Commonwealth of Massachusetts

Exhibit A



ORANGE STREET

EXISTING EDGE OF PAVEMENT



SITE PLAN

9/4/2013 - HDC

Curtis Residences
 29 Orange Street
 Nantucket, MA
 01954
 Map No.:
 Parcel No.:
 Zoning Info: R-OH
 Project No. 12
 Date: 9/4/2013
 Drawing No.:

HDC SUBMITTAL
 BUILDING PERMIT

DATE	DESCRIPTION





NANTUCKET
TOWN CLERK

2017 MAR 23 PM 3:02

**TOWN OF NANTUCKET
ZONING ADMINISTRATOR
NANTUCKET, MASSACHUSETTS 02554**

Date: March 23, 2017

To: Parties in Interest and Others concerned with the Decision of
The Zoning Administrator in the Application of the following:

Application No: 02-17

Owner/Applicant: Francis E. Cueto, as Trustee of the FAO
Nominee Trust(u/d/t dated February 1, 2010
recorded at book 1218, Page 129)

Property Description 29 Orange Street
Map 42.3.2 Parcels 68 & 69

Enclosed is the Decision of the Zoning Administrator which has this day
been filed with the office of the Nantucket Town Clerk.

An Appeal from this Decision to the Zoning Board of Appeals may be
taken pursuant to Nantucket Zoning Bylaw Section 139-29.C. (3)

Any action appealing the Decision must be brought by filing a notice of
appeal, specifying the grounds thereof, with the Town Clerk, pursuant
to Nantucket Zoning Bylaw Section 139-29.C. (6)



Eleanor Weller Antonietti,
Zoning Administrator

cc: Town Clerk
Building Commissioner/Zoning Enforcement Officer

**TOWN OF NANTUCKET
NANTUCKET ZONING ADMINISTRATOR
2 Fairgrounds Road
Nantucket, Massachusetts 02554**

Assessor's Map 42.3.2 Parcels 68 & 69
29 Orange Street
Residential Old Historic (ROH)

Lots marked "A" & "C"
Plan Book 7, Page 23
Book 1391, Page 257

DECISION:

1. Upon review of the application submitted by the Applicant for the above-referenced property, it was determined by the Zoning Administrator pursuant to Nantucket Zoning By-Law Section 139-33.A(1)(b) that the proposed alteration, extension, and structural change to the pre-existing non-conforming structure shall not increase the nonconforming nature of said structure.
2. The Applicant is proposing to alter the existing structure by adding shed dormer windows to the front and rear elevations of the three story single-family dwelling. The proposed additions are within the buildable portion of the Property and will neither increase the pre-existing nonconforming setbacks or height of the structure nor create any new non-conformities.
3. The dwelling, shown on plan entitled, "Building Location Plan of Land in, Nantucket, Mass.," dated March 13, 2017, prepared by Blackwell & Associates, Inc., a reduced copy of which is attached hereto as "Exhibit A", was constructed prior to the adoption of the Nantucket Zoning By-Law and is pre-existing nonconforming with respect to the zoning regulations in the Residential Old Historic (ROH) Zoning District. More specifically, the dwelling is sited 2.9 feet from the southerly side yard lot line where a five (5) foot side yard setback is required and has a height in excess of thirty (30) feet which is the maximum allowed pursuant to Section 139-17.A.
4. The locus benefits from prior Special Permit relief in Board of Appeals Decision No. 072-13 granted pursuant to Section 139-33.A in order to allow two small additions to the north and south side of the existing dwelling within the buildable portion of the lot. A prior Zoning Administrator decision was issued in ZA No. 021-14 to allow for the addition of shed dormer windows to the rear (west) elevation. However, this decision was never recorded and the relief was never exercised. Applicant is herewith reapplying for the relief to install dormers on the rear (west) elevation and also requesting relief to install dormers on the front (east) elevation. The proposed dormers are within the buildable portion of the premises. The alterations will not bring the structure closer to the southerly lot line and will not increase the pre-existing nonconforming ridge height.

5. Based upon the foregoing, the Zoning Administrator finds that the proposed alterations consisting of the addition of shed dormers to the front and rear elevations of the pre-existing nonconforming dwelling will not increase the pre-existing nonconforming setback or height of the structure, will not create any new nonconformities, and hereby issues the permit as requested. This approval is subject to the following condition:
- a. There shall be no exterior construction between Memorial Day and Labor Day of any given year relative to the construction contemplated under this decision.

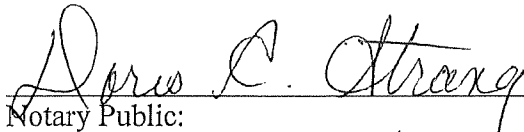


Eleanor Weller Antonietti
Zoning Administrator

COMMONWEALTH OF MASSACHUSETTS

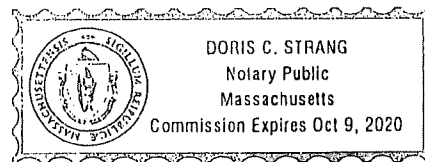
Nantucket, ss

On the 23rd day of March, 2017, before me, the undersigned notary public, personally appeared Eleanor Weller Antonietti, the above-named Zoning Administrator of Nantucket, Massachusetts, personally known to me to be the person whose name is signed on the preceding document, and acknowledged that she signed the foregoing instrument voluntarily for the purposes therein expressed.



Notary Public:

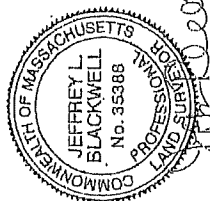
My Commission Expires: October 9, 2020



CURRENT ZONING CLASSIFICATION:
Residential Old Historic (R-OH)

MINIMUM LOT SIZE:	5000 S.F.	EXISTING
MINIMUM FRONTAGE:	50 FT.	7,337 S.F.±
FRONT YARD SETBACK:	none	SEE PLAN
REAR/SIDE SETBACK:	5 FT.	SEE PLAN
GROUND COVER % :	50%	37.1%

*INCLUDES ALLEN'S COURT



BUILDING LOCATION PLAN
OF LAND IN
NANTUCKET, MASS.

SCALE: 1"= 20' DATE: MARCH 13, 2017

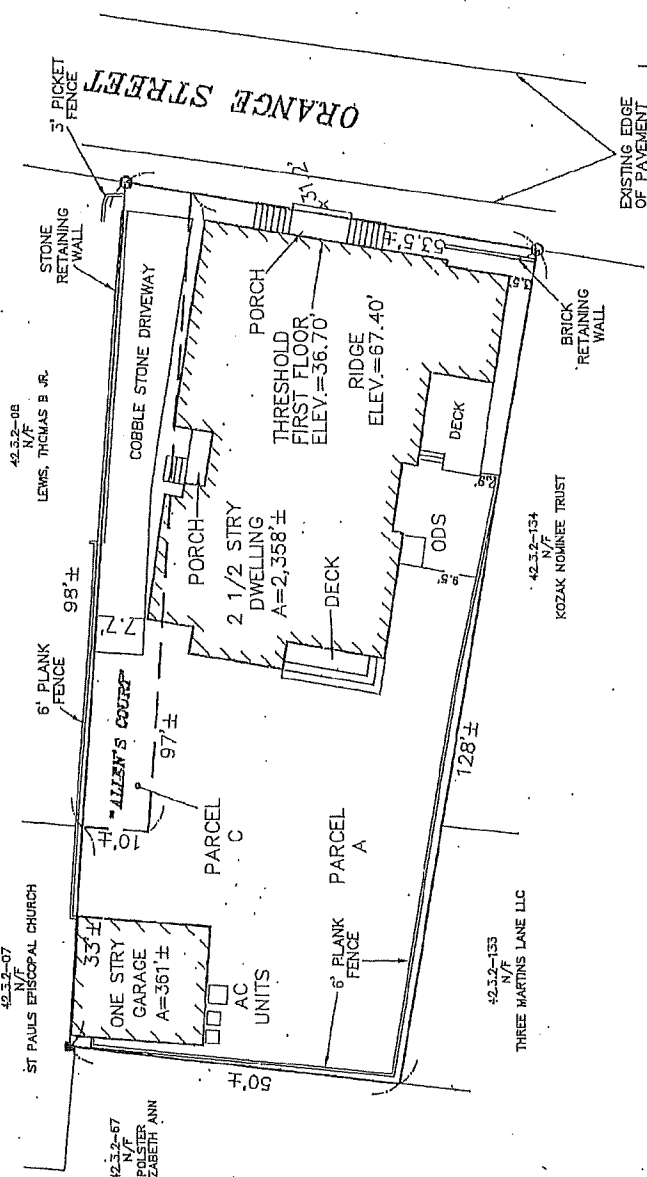
FAO NOMINEE TRUST

Owner: **FAO NOMINEE TRUST**
PARCEL A&C
Deed Bk./Pg.: 1391/257, Plan Bk./Pg.: 7/23.
Locust: 29 ORANGE STREET

29 ORANGE STREET

BLACKWELL & ASSOCIATES, Inc.
Professional Land Surveyors
20 TEASDALE CIRCLE
NANTUCKET, MASS. 02554
(508) 228-9026

FBK: B200/72



THIS PLOT PLAN WAS PREPARED FOR THE TOWN OF NANTUCKET BUILDING DEPARTMENT ONLY AND SHOULD NOT BE CONSIDERED A PROPERTY LINE SURVEY. THIS PLAN SHOULD NOT BE USED TO ESTABLISH PROPERTY LINES, FENCES, HEDGES OR ANY ANCILLARY STRUCTURES ON THE PREMISES. THE PROPERTY LINES SHOWN RELY ON CURRENT DEEDS AND PLANS OF RECORD.

THIS PLOT PLAN IS NOT A CERTIFICATION AS TO TITLE OR OWNERSHIP OF THE PROPERTY SHOWN. OWNERS OF ADJOINING PROPERTIES ARE SHOWN ACCORDING TO CURRENT ASSESSOR RECORDS.

ASSESSOR MAP: 42.3.2, PARCEL: 69.

NOTE

FOR SPECIAL PERMIT FROM TOWN OF NANTUCKET
BOARD OF APPEALS, SEE BK: 1416 PG. 16
FOR DECISION.

LEGEND

51.2
X DENOTES EXISTING GRADE, SPOT ELEVATION
O DENOTES IRON PIPE FOUND
■ DENOTES CONCRETE BOUND FOUND

T:\ADAM 25 JOB 112 3/13/2017 2:22:29 PM EDT

112



TOWN OF NANTUCKET
BOARD OF APPEALS
NANTUCKET, MASSACHUSETTS 02554

Date: May 19, 2006

To: Parties in Interest and Others concerned with the
Decision of the BOARD OF APPEALS in the Application of the
following:

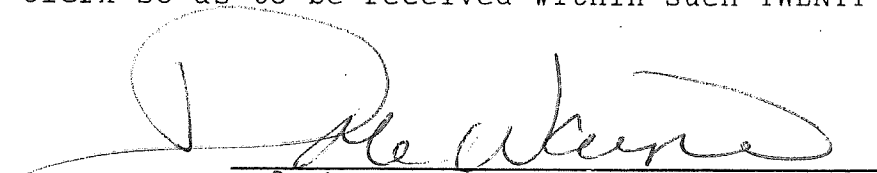
Application No.: 038-06

Owner/Applicant: Robert B. and Sally Jo
Winebrenner

Enclosed is the Decision of the BOARD OF APPEALS which has
this day been filed in the office of the Nantucket Town
Clerk.

An Appeal from this Decision may be taken pursuant to
Section 17 of Chapter 40A, Massachusetts General Laws.

Any action appealing the Decision must be brought by
filing an complaint in court within TWENTY (20) days after
this day's date. Notice of the action with a copy of the
complaint and certified copy of the Decision must be given
to the Town Clerk so as to be received within such TWENTY
(20) days.


Dale Waihe, Chairman

cc: Town Clerk
Planning Board
Building Commissioner

PLEASE NOTE: MOST SPECIAL PERMITS AND VARIANCES HAVE A TIME
LIMIT AND WILL EXPIRE IF NOT ACTED UPON ACCORDING TO NANTUCKET
ZONING BY-LAW §139-30I (SPECIAL PERMITS); §139-32I (VARIANCES)
ANY QUESTIONS, PLEASE CALL THE NANTUCKET ZONING BOARD OF APPEALS.

TOWN OF NANTUCKET
ZONING BOARD OF APPEALS
1 EAST CHESTNUT STREET
NANTUCKET, MASSACHUSETTS 02554

Assessor's Map 42.3.2, Parcel 9
Book 985, Page 3
Residential-Old-Historic District

No plan on record
23 Orange Street

DECISION:

At a Public Hearing of the Nantucket Zoning Board of Appeals, held at 1:00 P.M., Friday, MAY 12, 2006, in the Conference Room, Town Annex Building, 37 Washington Street, Nantucket, Massachusetts, on the Application of the **ROBERT B. AND SALLY JO WINEBRENNER**, of 23 Orange Street, Nantucket, Massachusetts 02554, Board of Appeals File No. **038-06**, the Board made the following Decision:

1. Applicants are seeking relief by SPECIAL PERMIT under Nantucket Zoning By-law Section 139-33A (alteration/expansion of a pre-existing/nonconforming structure/use), and to the extent necessary, a MODIFICATION of the SPECIAL PERMIT relief granted in the Decision in BOA File No. 031-06, that allowed alterations and expansions of a portion of a pre-existing nonconforming single-family dwelling. Applicants are now seeking to demolish and replace the rear about 106 square-foot addition, that was the subject of the previous grant of relief, rather than simply raise the roof on the existing portion of the dwelling. The reconstructed addition would be placed substantially on the same footprint as the original addition and would come no closer to the side yard lot line than the original addition and be sited farther away from the easterly side yard lot line than the existing structure. In addition, to the extent necessary, relief is sought by SPECIAL PERMIT under Nantucket Zoning By-law Section 139-33E(2)(a) in order to demolish and replace the addition, while maintaining the maximum nonconforming ground cover ratio currently contained on the lot, of about 34% (or about 1,590 square feet). Alternate relief is also available by Special Permit under Nantucket Zoning By-law Section 139-33A(9) to be able to remove and replace a structure or a portion of a structure that exceeds maximum ground cover so long as the nonconforming ground cover ratio is not increased. Other work is currently being performed on the structure but does not need any relief from this Board. The property is nonconforming as to lot size with the lot containing about 4,679 square feet of area in a district that requires a minimum lot size of 5,000 SF; as to ground cover with the lot containing about 34% ground cover ratio in a district that allows a maximum ground cover ratio for undersized lots of 30%; as to frontage, with the lot having about 24.25 feet of frontage on Orange Street in a district that requires a minimum frontage of 50 feet; and as to setback, with the structure being sited as close as zero feet (common wall) from the northerly side yard lot line, as close as zero feet from the southerly side yard lot line and as close as zero feet from the easterly side yard lot line, in a district that requires a minimum side yard setback of five feet.

The Premises is located at **23 ORANGE STREET**, Assessor's Map 42.3.2, Parcel 9, no plan on record, Plan Book 985, Page 3. The property is zoned Residential-Old-Historic.

2. The Decision is based upon the Application and the materials submitted with it and the testimony and evidence presented at the Hearing. The Planning Board made no recommendation finding that the matter did not present any issues of planning concern. There were no letters on file and no opposition presented at the hearing.

3. The Applicants stated that in May 2006 they received a grant of Special Permit relief from this Board in the Decision in BOA File No. 031-06 in order to alter and extend an existing about 106-foot addition on the rear of the single-family dwelling as part of a substantial renovation of the structure that would not result in an increase of the nonconforming ground cover ratio of about 34%. As part of the renovation, the Applicants had originally proposed to alter the existing roof pitch of the rearmost addition by raising one side to make the roof level under a second floor deck with a finished height of about nine feet without coming any closer to the easterly side yard lot line than the existing structure. Applicants represented that during the renovation process it was found that the walls on that part of the house were rotted and would not support a new roof nor withstand having a new foundation placed under them. The Applicants demolished and began the process of reconstructing the addition on the same footprint, with the same proposed height. The new addition would come no closer to the easterly side yard lot line than the previous addition and no closer than the existing house. The addition would not increase the nonconforming ground cover ratio of 34%. The Nantucket Historic District Commission had also approved the demolition and reconstruction of the addition as it was going to result in an addition that architecturally represented what was approved originally. Other alterations approved originally by the Nantucket Historic District Commission in their Certificate of Appropriateness No. 47,496 would be done within the existing footprint of the main portion of the house, and would not need relief from this Board. When Steve Butler from the Building Department inspected the work he asked the Applicant to return to this Board to modify the relief to include demolition and reconstruction of the rear addition. Applicants are also seeking relief by special permit due to the temporary reduction in the overall nonconforming ground cover ratio of 34% due to the demolition of the about 106 square-foot rear addition. Ground cover would be momentarily reduced by about .02% and would then be increased again to 34% with the reconstruction of the rear addition.

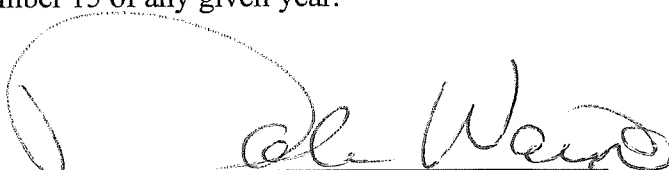
4. Based upon the foregoing, the Board finds that a grant of the Modification of the previous Special Permit relief granted in the Decision in BOA File No. 031-06 to allow demolition and reconstruction of the rear addition of the single-family dwelling as proposed with a new roof height of about nine feet and sited within the required easterly five-foot side yard setback area, would constitute a minimal increase in the massing within said setback area. However, the Board further finds that said increase would not be substantially more detrimental to the neighborhood than the existing structure and would have minimal to no impact on surrounding properties. The Board notes that this section of the structure is at the rear of the property and proximate a parking lot area that is currently used in conjunction with the church located to the west of the Locus. In addition, the Board finds that the temporary decrease of ground cover with the demolition of the about 106 square-foot rear addition, and its reconstruction, resulting in the same overall ground cover ratio of 34%, would not be substantially more detrimental to the neighborhood than the existing situation.

5. Accordingly, by a UNANIMOUS vote, the Board GRANTS the requested MODIFICATION of the SPECIAL PERMIT granted in the Decision in BOA File No. 031-06 under Nantucket Zoning By-law Section 139-33A, to allow the demolition and reconstruction of

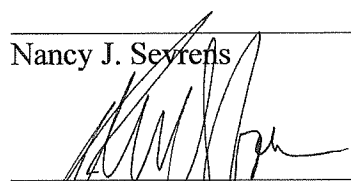
the rear addition as proposed; and under Section 139-33E(2)(a) to allow a maximum ground cover of 34% for the lot, based upon the following conditions:

- a. There shall be no expansion of the ground cover ratio without further relief from this Board, and shown on the "Mortgage Plot Plan", done by Charles W. Hart & Associates, Inc., dated October 14, 2005, a reduced copy of which is attached hereto as Exhibit A;
- b. The alterations/expansion of the rear addition shall be completed in substantial conformance with the Certificate of Appropriateness No. 48,320 issued by the Nantucket Historic District Commission, as may be amended from time to time; and
- c. There shall be no exterior construction related to this work allowed between June 15 and September 15 of any given year.

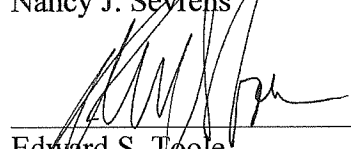
Dated: May 19, 2006



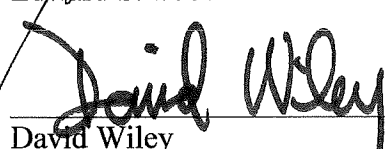
Dale Waine



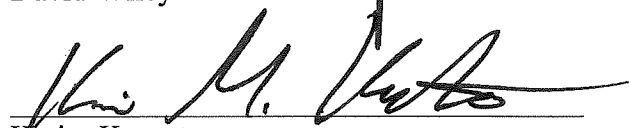
Nancy J. Seyrens



Edward S. Toole



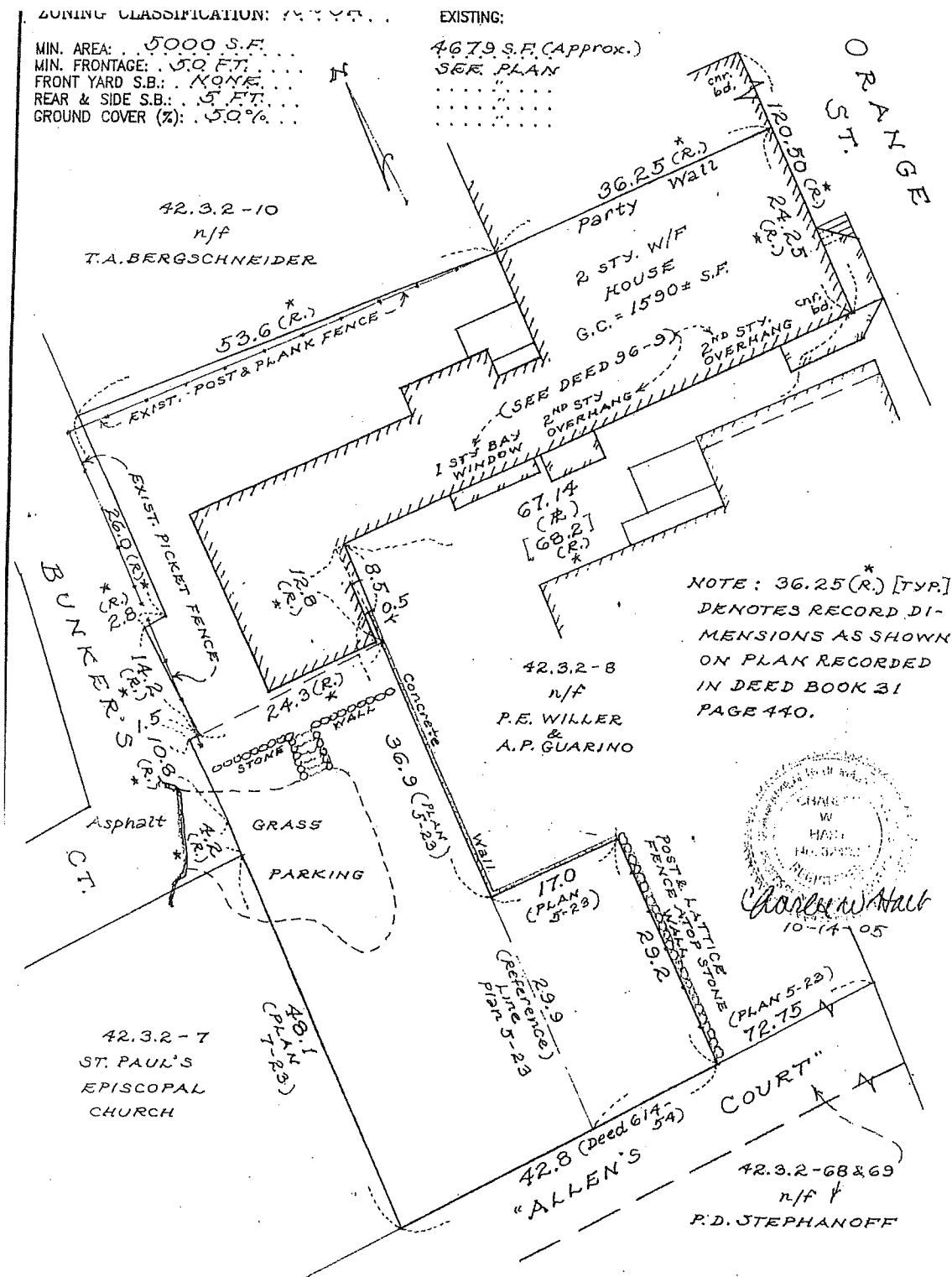
David Wiley



Kerim Koseatac

EXISTING:

4679 S.F. (Approx.)
SEE PLAN



MORTGAGE PLOT PLAN
OF LAND IN
NANTUCKET, MASS.

I CERTIFY, TO THE BEST OF MY KNOWLEDGE, THAT THE PREMISES SHOWN ARE LOCATED IN FLOOD HAZARD ZONE: "C", DELINEATED ON F.I.R.M. / COMMUNITY PANEL NUMBER: 250230-00. I, D, BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY. EFFECTIVE DATE OF MAPS: JUNE 3, 1986, AND AS PERIODICALLY REVISED.

Owner: C. LEWELLYN FOLGER NONE
Deed: 614-54 Plan: FOUND
Tax Map: 42.3.2-9 Locus: 23 ORANGE ST.

CHARLES W. HART & ASSOCIATES, Inc.
SANFORD BOAT BUILDING
49 SPARKS AVENUE
NANTUCKET, MASS. 02554

NOT TO BE RECORDED.

(508) 228-8910

H-6872



TOWN OF NANTUCKET
BOARD OF APPEALS

NANTUCKET, MASSACHUSETTS 02554



Bk: 1025 Pg: 339 Page: 1 of 4
Doc: SP 06/08/2006 01:24 PM

Date: May 10, 2006

To: Parties in Interest and Others concerned with the
Decision of the BOARD OF APPEALS in the Application of the
following:

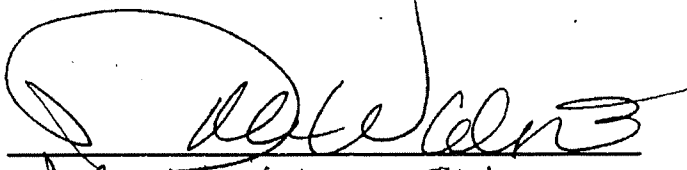
Application No.: 031-06

Owner/Applicant: Robert B. and Sally Jo
Winebrenner

Enclosed is the Decision of the BOARD OF APPEALS which has
this day been filed in the office of the Nantucket Town
Clerk.

An Appeal from this Decision may be taken pursuant to
Section 17 of Chapter 40A, Massachusetts General Laws.

Any action appealing the Decision must be brought by
filing an complaint in court within TWENTY (20) days after
this day's date. Notice of the action with a copy of the
complaint and certified copy of the Decision must be given
to the Town Clerk so as to be received within such TWENTY
(20) days.


Dale Wahe, Chairman

cc: Town Clerk
Planning Board
Building Commissioner

PLEASE NOTE: MOST SPECIAL PERMITS AND VARIANCES HAVE A TIME
LIMIT AND WILL EXPIRE IF NOT ACTED UPON ACCORDING TO NANTUCKET
ZONING BY-LAW §139-30I (SPECIAL PERMITS); §139-32I (VARIANCES)
ANY QUESTIONS, PLEASE CALL THE NANTUCKET ZONING BOARD OF APPEALS.

RECEIVED

MAY 17 PM 12:10

NANTUCKET
TOWN CLERK

TOWN OF NANTUCKET
ZONING BOARD OF APPEALS
1 EAST CHESTNUT STREET
NANTUCKET, MASSACHUSETTS 02554

Assessor's Map 42.3.2, Parcel 9
Book 985, Page 3
Residential-Old-Historic District

No plan on record
23 Orange Street

DECISION:

At a Public Hearing of the Nantucket Zoning Board of Appeals, held at 1:00 P.M., Friday, April 7, 2006, in the Conference Room, Town Annex Building, 37 Washington Street, Nantucket, Massachusetts, on the Application of the **ROBERT B. AND SALLY JO WINEBRENNER**, of 23 Orange Street, Nantucket, Massachusetts 02554, Board of Appeals File No. **031-06**, the Board made the following Decision:

1. Applicants are seeking relief by SPECIAL PERMIT under Nantucket Zoning By-law Section 139-33A (alteration/expansion of a pre-existing/nonconforming structure/use). Applicants propose to alter and extend a single-family dwelling by raising the roof height of a portion of a rear addition from about 6'8" feet to about nine feet. The rear el currently has a sloped roof and the lower part of the roof would be raised to meet the higher part to create a flat area under a raised deck area within the required easterly five-foot side yard setback area but without coming any closer to the lot line than the existing structure or increasing the nonconforming ground cover ratio. Other work would be performed on the structure but would not need any relief from this Board. The property is nonconforming as to lot size with the Lot containing about 4,679 square feet of area in a district that requires a minimum lot size of 5,000 SF; as to ground cover with the lot containing about 32% ground cover ratio in a district that allows a maximum ground cover for undersized lots of 30%; as to frontage, with the lot having about 24.25 feet of frontage on Orange Street in a district that requires a minimum frontage of 50 feet; and as to setback, with the structure being sited as close as zero feet (common wall) from the northerly side yard lot line, as close as zero feet from the southerly side yard lot line and as close as zero feet from the easterly side yard lot line, in a district that requires a minimum side yard setback of five feet.

The Premises is located at **23 ORANGE STREET**, Assessor's Map 42.3.2, Parcel 9, no plan on record, Plan Book 985, Page 3. The property is zoned Residential-Old-Historic.

2. The Decision is based upon the Application and the materials submitted with it and the testimony and evidence presented at the Hearing. The Planning Board made no recommendation finding that the matter did not present any issues of planning concern. There were no letters on file and no opposition presented at the hearing.

3. The Applicants represented that the Locus was dimensionally nonconforming as stated above in Paragraph 1. The Applicants are undertaking a substantial renovation of the structure that would not result in an increase of the nonconforming ground cover ratio of about

34%. As part of the renovation, the Applicants propose to alter the existing roof plane of the rearmost addition by raising one side to make the roof level under a second floor deck with a finished height of about nine feet without coming any closer to the easterly side yard lot line. That portion of the structure is sited as close as about 0.5 feet from the lot line with the main portion of the dwelling sited at zero from the same lot line. A portion of the rear addition is sited outside the required five-foot setback area. Other alterations approved originally by the Nantucket Historic District Commission in their Certificate of Appropriateness No. 47,496 would be done within the existing footprint, and would not need relief from this Board.

4. Based upon the foregoing, the Board finds that a grant of the Special Permit relief requested to allow the alteration of the rear addition of the single-family dwelling by leveling the height of the roof as proposed partially within the required easterly five-foot setback area, would constitute a minimal increase in the massing within said setback area. However, the Board further finds that said increase would not be substantially more detrimental to the neighborhood than the existing structure and would have minimal to no impact on surrounding properties. The Board notes that this section of the structure is at the rear of the property and proximate a parking lot area that is currently used in conjunction with the church located to the west of the Locus.

5. Accordingly, by a UNANIMOUS vote, the Board GRANTS the requested relief by SPECIAL PERMIT under Nantucket Zoning By-law §139-33A, to allow the alterations and expansion of the dwelling as proposed, based upon the following conditions:

- a. There shall be no expansion of the ground cover ratio without further relief from this Board, and shown on the "Mortgage Plot Plan", done by Charles W. Hart & Associates, Inc., dated October 14, 2005, a reduced copy of which is attached hereto as Exhibit A;
- b. The alterations/expansion of the rear addition shall be completed in substantial conformance with the Certificate of Appropriateness No. 47,496 issued by the Nantucket Historic District Commission, as may be amended from time to time; and
- c. There shall be no exterior construction related to this work allowed between June 15 and September 15 of any given year.

Dated: May 10, 2006

I CERTIFY THAT THE DECISION WAS FILED IN THE OFFICE OF THE TOWN CLERK, AND THAT NO APPEAL HAS BEEN FILED PURSUANT TO GENERAL LAWS 40A, SECTION 11

[Signature]
TOWN CLERK

JUN 08 2006

ATTEST: A TRUE COPY

[Signature]
NANTUCKET TOWN CLERK

Date Waine

[Signature]
Michael J. O'Mara

RECEIVED
NANTUCKET
TOWN CLERK
06 MAY 10 P2:30

C. Richard Loftin

[Signature]
Nancy J. Sevens

[Signature]
Edward S. Toole

VARIANCE DECISIONS – TOM NEVERS

DOCUMENT No. 37512

Suburban Registry District

OCT 10 1986

RECEIVED FOR REGISTRATION

2 O'CLOCK 47 ^M

Variance

DOCUMENT No. 37512

Suburban Registry District

OCT 10 1986

RECEIVED FOR REGISTRATION

2 O'CLOCK 47 ^M

NOTED ON CERTIFICATE NO. 11705
IN REGISTRATION BOOK 60 PAGE 153
ATTEST *Sandra Henderson*
ASST. RECORDER

037512

BOARD OF APPEALS
TOWN OF NANTUCKET
NANTUCKET, MASSACHUSETTS 02554

DECISION:

The BOARD OF APPEALS, at a Public Hearing held on FRIDAY, SEPTEMBER 5, 1986 at 1:30 p.m. in the Town and County Building, Nantucket, made the following Decision on the Application of RONALD AND LINDA HEURLIN (097-86) of Box 1171, Nantucket, MA 02554.

1. Applicants seek a VARIANCE from the minimum lot size requirements of SECTION 139-16A of the Zoning By-Law intensity regulations to cure a non-conformity affecting marketability and buildability of five contiguous lots comprising the premises. The premises are located at Mayhew Road, Ton Nevers, Assessor's Parcels 92.4-215 through 219, Lots 145-141, respectively, Land Court Plan 5004-D, Sheet 5, and zoned LIMITED USE GENERAL-III.

2. Our findings are based upon the Application papers including a copy of Land Court Plan 5004-D, Sheet 5, and representations, Assessor's Map 92.4 (marked to delineate the premises) and Attorney's Affidavit dated July 11, 1985 received at our hearing. Based upon counsel's affidavit and explanations, we understand that the premises were at all times prior to upzoning - and resultant non-conformity - held in ownership separate from any adjoining land. When created and until such upzoning, the premises conformed to then existing zoning requirements, e.g., as to area and frontage. The premises with area of approximately 0.55 acres, are now substandard since a minimum of 120,000 SF is required.

3. Subsequent to the LUG-III upzoning, on April 2, 1984, Applicants' predecessors confirmed their title following Land Court tax title proceedings by the developer Nantucket Beach Properties ("NBP"). By pre-arrangement of the parties NBP obtained a new Certificate of Title to the premises from the Land Court. At that moment, NBP was owner in common of the premises and abutting land, e.g., Parcels 92.4-220

(097-86)

-2-

through 224 (Lots 140-136). promptly thereafter, NBP effected a confirmatory transfer of title to Applicants' predecessors, \$575.00 being paid to recompense NBP for its prior payment of back taxes.

4. In LUG-III, use is limited to single-family residences.

5. No opposition was heard. The Planning Board's recommendation was favorable. Having acquired the property in March, 1985, Applicants would face severe financial hardship if the premises were not buildable. Such hardship runs with the land.

6. As we understand the applicable zoning law, Ch. 40A, Section 6, MGL, fourth paragraph, first sentence (our code Section 139-33E), the subsequent, momentary, common ownership by NBP did not result in a "merger" for zoning purposes or otherwise deprive the premises of their protected status as grandfathered for single-family residential use, i.e., construction of a single-family residence. *Carciofi v. Board of Appeals of Billerica*, 22 Mass. App. Ct. 926 (1986). In the Land Use Manager, Vol. 3, Ed. 6 August 1986 published by the Commonwealth's Executive Office of Communities and Development, a six-pronged test for qualifying under this grandfathering provision is set forth, to which Applicants' situation conforms, namely (restated):

1. The premises have at least 5000 SF with 50-foot frontage;
2. Zoned for single-family use;
3. Conformed to existing zoning when legally created;
4. Separately owned per the most recent title instrument of record prior to the effective date of the restrictive upzoning which now makes the premises substandard;
5. When conveyed after the upzoning, the premises retained separate identity, at all times being described as separate and distinct;
6. As of such upzoning date, the premises were in fact separate and not legally available for use in connection with adjoining land.

7. We find, therefore, that the premises remain grandfathered, hence buildable, notwithstanding the momentary common ownership to rectify title. Accordingly, the relief sought may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purposes of the zoning chapter.

8. This Board, by UNANIMOUS vote, GRANTS to Applicants the requested VARIANCE subject to the condition that Applicants effect a legal merger of their 5 lots constituting the premises and make the same of record in the Registry of Deeds of Nantucket.

Dated: September 19, 1986

Nantucket, MA 02554

*Received
September 19, 1986
@ 2:30 pm.
Kathleen D. Perry
Town Clerk*

William R. Sherman
William R. Sherman

Dorothy D. Vollans
Dorothy D. Vollans

Dale Waine
Dale Waine

I CERTIFY THAT 20 DAYS HAVE ELAPSED AFTER THE DECISION WAS FILED IN THE OFFICE OF THE TOWN CLERK, AND THAT NO APPEAL HAS BEEN FILED, PURSUANT TO GENERAL LAWS 40A, SECTION 11

James M. Waldgate
Asst. TOWN CLERK



DOCUMENT No. 38551

Yamiruckel Registry District

DEC 30 1986

RECEIVED FOR REGISTRATION

11 O'CLOCK 01 PM

NOTED ON CERTIFICATE NO. 12295

IN REGISTRATION BOOK

PAGE

ATTEST

Barbara M. M. M. M.

ASST. RECORDER

DOCUMENT No. 38551

Yamiruckel Registry District

DEC 30 1986

RECEIVED FOR REGISTRATION

07 O'CLOCK PM

Varlane

Nantucket

City or Town

BOARD OF APPEALS

Date:

December 5, 1986

Certificate of Granting of Variance or Special Permit
(General Laws Chapter 40A, Section 11)

The Board of appeals of the City or Town of Nantucket

hereby certifies that a ~~Variance or Special Permit~~ has been granted

To Richard E. Kotalac, Jr. (140-86)

Address _____

City or Town _____

affecting the rights of the owner with respect to land or buildings at 69 Tom Nevers Road,
Assessor's Parcel 75-138, Land Court Plan 5004-30, Lot 672

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said variance — ~~special permit~~, and that copies of said decision, and of all plans referred to in the decision, have been filed with the planning board and the city or town clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no ~~variance or special permit~~, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town or city clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.

William R. Sherrin
Chairman

Andrew J. Leddy Jr.
Clerk

TOWN OF NANTUCKET
BOARD OF APPEALS
NANTUCKET, MASSACHUSETTS 02554

DECISION:

In the matter of the application of RICHARD E. KOTALAC, JR. (140-84), at a meeting of the BOARD OF APPEALS held at 1:30 P.M. on Friday, November 21, 1986, at the Town and County Building, Nantucket, the Board enters the following Decision and makes the following findings:

1. This is an application for a variance from the provisions of the Nantucket zoning by-law, Section 139-16.A (Intensity Regulations: Minimum Lot Size, Frontage and Ground Cover Ratio). The Applicant seeks to be relieved from the lot size, frontage and ground cover ratio requirements of the by-law for his vacant lot, created prior to the zoning by-law and thereafter held in common ownership with adjacent land for a time. The premises are located at 69 TOM NEVERS ROAD, Assessor's Parcel 75-138, Land Court Plan 5004-30, Lot 672, and are zoned LIMITED USE GENERAL-3.

2. The Applicant's premises consist of a vacant lot containing about one-half acre, with frontage of 165.79 feet on Tom Nevers Road, created by Land Court Plan 5004-30, a plan submitted to the Planning Board in 1971 (prior to the adoption of the zoning by-law) and endorsed as "approval not required" under Massachusetts General Laws, Chapter 41, Section 81P. At the time of adoption of this zoning by-law, effective in July, 1972, and thereafter when the present applicable dimensional requirements of the by-law were adopted, effective in August, 1973, the premises remained in common ownership with adjacent land. Accordingly,

despite the endorsement of the lot prior to these zoning changes, no freeze of dimensional requirements of the by-law has ever been applicable.

3. The premises first came into separate ownership from all adjacent land on June 18, 1976, when sold to one John G. MacLeod by deed registered as Document No. 17164 at Nantucket Registry District. Thereafter, they have continuously remained in separate ownership from all adjacent land, having been transferred several times, most recently to the Applicant, who acquired the premises on January 16, 1986, for consideration of \$70,000.00, as appears by deed registered as Document No. 34689.

4. The Applicant has applied for a building permit for the construction of a single-family dwelling upon the premises, and has been informed by the Building Department that a building permit will be due for issuance in January, 1987. However, he has now been advised for the first time by counsel to a prospective purchaser of the premises that the lot is not considered to be buildable because it does not comply with the minimum lot size (120,000 square feet) and frontage (200 feet) of the by-law. Furthermore, the provision of the by-law, permitting lots of record in separate ownership at the time of adoption of the by-law to be built upon to the extent of 1,500 square feet of ground cover if they contain at least 5,000 square feet in lot area, is not applicable because this lot was held in common ownership at the time of the adoption of the applicable by-law provisions. Accordingly, the Applicant is now before us for variance relief from these intensity regulations of the by-law.

5. We find that the Applicant comes before us as a good-faith purchaser of his premises, who has no means of curing the problems of buildability of the lot other than by relief from this board, and who will sustain severe financial loss if his lot cannot be built upon. Furthermore, we find that many of the similarly-situated lots in the same subdivision have been built upon pursuant to building permits issued by the Building Department notwithstanding the issues raised, and that little public benefit would result from a denial of buildability.

6. Accordingly, we find that, owing to circumstances relating to the shape of the lot and especially affecting the premises but not affecting generally the zoning district in which it is located (consisting of the size and configuration of this particular lot and the circumstances of its creation and conveyance), a literal enforcement of the by-law would involve substantial financial hardship to the Applicant (consisting of the financial loss resulting from lack of buildability and attendant loss of marketability), and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the by-law (as set forth in Paragraph 5).

7. We caution that the decision reached in this case is reached upon the facts set forth herein, particularly the good-faith nature of the Applicant's status, and that we might well reach a different decision upon the facts presented by another case, even if the history of subdivision and conveyance were similar to that now before us.

8. For the reasons herein set forth, the BOARD OF APPEALS hereby GRANTS the Applicant a VARIANCE from the Nantucket zoning by-law, Section 139-16.A, permitting the construction of one single-family dwelling not to exceed 1,100 square feet in ground cover notwithstanding the nonconformity with the dimensional requirements of the by-law, by a UNANIMOUS VOTE.

William R. Sherman
William R. Sherman

Dated: December 5, 1986

Dorothy D. Vollans
Dorothy D. Vollans

Andrew J. Leddy, Jr.
Andrew J. Leddy, Jr.

*Received December 5, 1986
Janice M. Haldgate
Assistant Town Clerk*

I CERTIFY THAT 30 DAYS HAVE ELAPSED AFTER THE DECISION WAS FILED IN THE OFFICE OF THE TOWN CLERK, AND THAT NO APPEAL HAS BEEN FILED, PURSUANT TO GENERAL LAWS 40A, SECTION 11

Madeline S. Perry
TOWN CLERK

December 29, 1986

DOCUMENT No. 39242

Nantucket Registry District

MAR 10 1987

RECEIVED FOR REGISTRATION

3 O'CLOCK 23 m P M

Variance

DOCUMENT No. 39242

Nantucket Registry District

MAR 10 1987

RECEIVED FOR REGISTRATION

3 O'CLOCK 23 m P M

NOTED ON CERTIFICATE NO

12910

IN REGISTRATION BOOK

66 PAGE 160

ATTEST

Sandra M. Hubbard

ASST. RECORDER

Nantucket

City or Town

BOARD OF APPEALS

Date: December 18, 1986

Certificate of Granting of Variance or Special Permit
(General Laws Chapter 40A, Section 11)

The Board of appeals of the City or Town of Nantucket

hereby certifies that a Variance or Special Permit has been granted

To Carol C. Harrigan (143-86)

Address 34 Charter Oaks Drive

City or Town Wilton, CT

affecting the rights of the owner with respect to land or buildings at 9 Flintlock Road,

Tom Nevers, Assessor's Parcel 075-92, Land Court Plan 5004-27, Lot 612

CERT OF TITLE NO 12910

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said variance — ~~special permit~~, and that copies of said decision, and of all plans referred to in the decision, have been filed with the planning board and the city or town clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no variance or ~~special permit~~, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town or city clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.


Chairman

Clerk

BOARD OF APPEALS
TOWN OF NANTUCKET
NANTUCKET, MASSACHUSETTS 02554

DECISION:

The BOARD OF APPEALS, at a Public Hearing held on FRIDAY, DECEMBER 12, 1986 at 1:30 p.m. in the Town and County Building, Nantucket, made the following decision upon the Application of CAROL C. HARRIGAN (143-86) address 34 Charter Oaks Drive, Wilton, CT.

1. Applicant seeks a ~~VARIANCE~~ from the 120,000 SF minimum lot area requirements of Zoning By-Law SECTION 139-16A to render buildable a 1.17 acre lot. The premises are located at 9 FLINTLOCK ROAD, TOM NEVERS, Assessor's Parcel 075-92, Land Court Plan 5004-27, Lot 612 and zoned LIMITED USE GENERAL-3.

2. In view of the similarity of legally-relevant facts, we heard Applications 143-86 and 144-86 concurrently. In any event, our findings are based upon the Application papers and correspondence in this record and representations and testimony pertinent to this matter at our hearing.

3. We find that the lot came into existence in 1971 with the Planning Board's endorsement of a subdivision plan submitted under the Subdivision Control Act. In accordance with our By-Law Section 139-33G and Massachusetts Zoning Act, Ch. 40A M.G.L. §6 to which it conforms, the lot was governed by any applicable zoning provisions in effect at the time of submission of the subdivision plan, and continued to be so governed for 7 years until 1978. When this protective zoning freeze period expired in 1978, the lot was subject to the same 120,000 SF minimum lot size requirements as are currently in effect.

4. Since our zoning did not come into effect until mid-1972, the lot was neither non-conforming nor unbuildable prior to 1978. However, no building was built during this protective period. (Since 1972 only single-family dwellings have been permitted in LUG-3.)

(143-86)

-2-

5. The initial paragraph of our intensity regulations, Section 139-16A, provides that:

"No building shall be constructed and no building ... shall be used ... unless in conformity with the requirements set forth below:"

including, for LUG-3, the 120,000 SF minimum lot size (with reference to a "grandfathering" footnote). Applicant's counsel argued that the lot has been buildable since 1978, notwithstanding this provision, because of the footnote which he reads as if it said:

"Any lot lawfully laid out by plan, or deed duly recorded ... pursuant to the Subdivision Control Law before the effective date of this chapter (mid-1972, as noted above) may be built upon although the lot contains less than the required minimum lot area, provided that such lot was held in ownership separate from that of adjoining land ..."before the date the protective freeze period expired, (emphasis added).

The last phrase, outside the quotation, is not supported by any citation of case law but was apparently imputed into the text prior to the 1980's by Nantucket's bar in their real estate practices. Lacking legal precedent, we are unable to change the plain language of the footnote to render Applicant's lot buildable.

6. We should note here our findings that the lot was held in common ownership at least until 1974 when Applicant purchased it, having then and since a good faith belief that the lot was and would remain buildable, relying on counsel's advise.

7. Upon the alternative basis of grandfathering Section 139-33E, however, we believe that Applicant's lot is legally buildable. Here, we must rely on case law. This Section incorporates the confused language

(143-86)

-3-

of Ch. 40A M.G.L. §6 and would properly conform to the State Zoning Act if the following were added at the end of the first sentence:

"but at least 5,000 SF of area and 50 feet of frontage".

This sentence provides that:

"Any increase in area, (or) frontage ... requirement shall not apply to ~~a lot for single~~ ... family residential use, which at the time of recording or endorsement, whichever occurs sooner, was not held in common ownership with any adjoining land, conformed to then-existing requirements and had less than the proposed requirement of area and frontage."
(Emphasis added).

As we understood the case law, the underlined phrase is, by intention, to be read as requiring that (a) the lot conformed as to minimum lot size and frontage when it was legally created (true here), and (b) the most recent title instrument(s) of record prior to the effective date of the zoning requirement (i.e., lot size or frontage, to which the lot does not conform) must show that the lot was separately owned. *Adamowicz v. Ipswich*, 395 Mass 757(1985).

8. ~~For the LUG-3 zoning district~~ generally, the effective date of the 120,000 SF requirements was in mid-1973. For Applicant's lot, however, no zoning requirement existed until 1978. At that date, those requirements came into force with expiration of the zoning freeze period. But, by then, the title instruments of record showed the lot to be separately owned. The legal consequence of this interplay between grandfathering Sections 139-33E and G is that Applicant's lot is buildable.

9. Nonetheless, Applicant's counsel urges that we grant the requested relief by Variance to avoid further question, to validate that the lot is buildable and so marketable as such. A severe hardship

(143-86)

-4-

financial and otherwise, is readily found where the lot has been thus purchased and held in good faith reliance upon legal advice as to its buildability. We also readily find that the relief sought may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning chapter, on one condition. That is, one and only one dwelling unit may be built upon the lot, namely, a single-family dwelling, for health's sake, absent public sewer and water in the Tom Nevers area and with lot size less than 80,000 SF. We further find that Variance relief is appropriate where necessary in the face of notably confused statutory language to carry out legislative intent. See David Mercer, "Conveyancer's Handbook". We also find that Applicant has no relationship of record with the original subdividers here.

10. More troublesome is the third finding requisite for proper Variance relief. We are mindful of a paper furnished counsel of record in 144-86 styled "Objections" by certain opponents to Variance relief. Counsel maintained that cases cited in that paper were inapposite. Not so clear are grounds for finding circumstances "especially affecting" the instant lot but not affecting generally the LUG-3 district, in the face of opponents' citations. In any event, opponents did not address the reading of Sections 139-33E and G, taken together as above. Here, the Planning Board made a favorable recommendation, and no other opposition was heard.

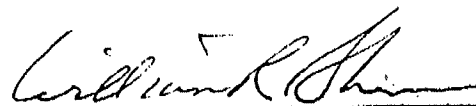
11. Accordingly, by UNANIMOUS vote, this Board GRANTS to Applicant the requested VARIANCE from Section 139-16A, to render the lot buildable subject to limiting the lot to one dwelling unit as set forth above.

(143-86)

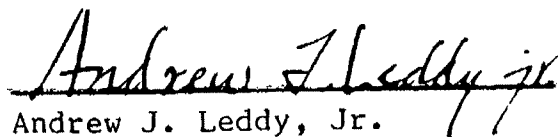
-5-

Dated: December 18, 1986

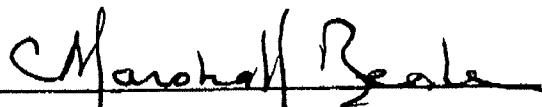
Nantucket, MA 02554



William R. Sherman



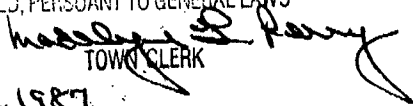
Andrew J. Leddy, Jr.



C. Marshall Beale

*Received December 18, 1986
James M. Wildgate, Asst. Town Clerk*

I CERTIFY THAT 20 DAYS HAVE ELAPSED AFTER THE DECISION
WAS FILED IN THE OFFICE OF THE TOWN CLERK, AND THAT
NO APPEAL HAS BEEN FILED, PURSUANT TO GENERAL LAWS
40A, SECTION 11


TOWN CLERK

February 11, 1987

*Attest: True Copy
James M. Wildgate
Town Clerk
February 11, 1987*

DOCUMENT No. 39245

Stamford Registry District

MAR 11 1987

RECEIVED FOR REGISTRATION
1 O'CLOCK 19 m P M

Variance

DOCUMENT No. 39245

Stamford Registry District

MAR 11 1987

RECEIVED FOR REGISTRATION
1 O'CLOCK 19 m P M

NOTED ON CERTIFICATE NO. 11209
IN REGISTRATION BOOK PAGE 59
ATTEST Andrea M. Black
ASST. RECORDER

IN THE COMMONWEALTH OF MASSACHUSETTS

Nantucket

City or Town

BOARD OF APPEALS

Date: December 18, 1986

Certificate of Granting of Variance or Special Permit
(General Laws Chapter 40A, Section 11)

The Board of appeals of the City or Town of Nantucket

hereby certifies that a ~~Variance or Special Permit~~ has been granted

To Curtis K. Sosebee (144-86) CERT OF TITLE 11, 209

Address Box 2391

City or Town Nantucket

affecting the rights of the owner with respect to land or buildings at 24 Lyons Lane,

Tom Nevers, Assessor's Parcel 076-19, Land Court Plan 5004-32, Lot 687

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said variance — ~~special permit~~, and that copies of said decision, and of all plans referred to in the decision, have been filed with the planning board and the city or town clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no variance or ~~special permit~~, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town or city clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.

William R. Sherman
 Chairman
Andrew J. Heddy Jr.
 Clerk

BOARD OF APPEALS
TOWN OF NANTUCKET
NANTUCKET, MASSACHUSETTS 02554

DECISION:

The BOARD OF APPEALS, at a Public Hearing held on FRIDAY, DECEMBER 12, 1986 at 1:30 p.m. in the Town and County Building, Nantucket, made the following Decision upon the Application of CURTIS K. SOSEBEE (144-86) address Box 2391, Nantucket, MA 02584.

1. Applicant seeks a VARIANCE from the 120,000 SF minimum lot area and 200-foot frontage requirements of Zoning By-Law SECTION 139-16A to render buildable and, accordingly marketable, a 1.03 acre lot with 196.35-foot frontage on LYONS LANE, AND 143.82-foot frontage on FLINT-LOCK ROAD. The premises are located at 24 LYONS LANE, TOM NEVERS, Assessor's Parcel 076-19, Land Court Plan 5004-32, Lot 687 and zoned LIMITED USE GENERAL-3.
2. In view of the similarity of legally-relevant facts, we heard Applications 143-86 and 144-86 concurrently. In any event, our findings are based upon the Application papers and correspondence in this record and representations and testimony pertinent to this matter at our hearing.
3. We find that the lot came into existence in 1971 with the Planning Board's ~~endorsement of a~~ subdivision plan submitted under the Subdivision Control Act. In accordance with our By-Law Section 139-33G and Massachusetts Zoning Act, Ch. 40A M.G.L. §6 to which it conforms, the lot was governed by any applicable zoning provisions in effect at the time of submission of the subdivision plan, and continued to be so governed for 7 years until 1978. When this protective zoning freeze period expired in 1978, the lot was subject to the same 120,000 SF minimum lot size and 200-foot frontage requirements as are currently in effect.
4. Since our zoning did not come into effect until mid-1972, the lot was neither non-conforming nor unbuildable prior to 1978. However, no building was built during this protective period. (Since 1972

4-86)

-2-

only single-family dwellings have been permitted in LUG-3.)

5. The initial paragraph of our intensity regulations, Section 139-16A, provides that:

"No building shall be constructed and no building... shall be used...unless in conformity with the requirements set forth below:"

including, for LUG-3, the 120,000 SF minimum lot size (with reference to a "grandfathering" footnote) and 200-foot frontage (see its definition in Section 139-2 applicable to this corner lot). Applicant's counsel argued that the lot has been buildable since 1978, notwithstanding this provision because of the footnote which he reads as if it said:

"Any lot lawfully laid out by plan, or deed duly recorded...pursuant to the Subdivision Control Law before the effective date of this chapter (mid-1972, as noted above) may be built upon although the lot contains less than the required minimum lot area, provided that such lot was held in ownership separate from that of adjoining land..." before the date the protective freeze period expired, (emphasis added).

The last phrase, outside the quotation, is not supported by any citation of case law but was apparently imputed into the text prior to the 1980's by Nantucket bar in their real estate practices. Lacking legal precedent, we are unable to change the plain language of the footnote to render Applicant's lot buildable.

6. We should note here our findings that the lot was held in common ownership at least until 1973 when a predecessor of Applicant purchased it, Applicant taking title in 1983 believing then that the lot was buildable on advise of counsel and in fact constructed a single-family dwelling and received his Certificate of Occupancy.

7. Upon the alternative basis of grandfathering Section 139-33E, however, we believe that Applicant's lot is legally buildable. Here, we must rely on case law. This Section incorporates the confused language of Ch. 40A M.G.L. §6 and would properly conform to the State Zoning Act if the following were added at the end of the first sentence:

"but at least 5000 SF of area and 50 feet of frontage".

This sentence provided that:

"Any increase in area, (or) frontage...requirement shall not apply to a lot for single...family residential use, which at the time of recording or endorsement, whichever occurs sooner, was not held in common ownership with any adjoining land, conformed to then-existing requirements and had less than the proposed requirement of area and frontage."
(Emphasis added).

As we understood the case law, the underlined phrase is, by intention, to be read as requiring that (a) the lot conform as to minimum lot size and frontage when it was legally created (true here), and (b) the most recent title instrument(s) of record prior to the effective date ~~of the zoning requirement (i.e., lot size or frontage, to which the lot does not conform)~~ must show that the lot was separately owned. *Adamowicz v. Ipswich*, 395 Mass 757(1985).

8. For the LUG-3 zoning district generally, the effective date of the 120,000 SF and 200-foot frontage requirements was in mid-1973. For Applicant's lot, however, no zoning requirement existed until 1978. At that date, those requirements came into force with expiration of the zoning freeze period. But by then, the title instruments of record showed the lot to be separately owned, The legal consequence of this interplay between grandfathering Sections 139-33E and G is that Applicant's lot

4-86)

-4-

is buildable.

9. Nonetheless, Applicant's counsel urges that we grant the requested relief by Variance to avoid further question, to validate that the lot is buildable and so marketable as such. A severe hardship, financial and otherwise, is readily found where the lot has been thus purchased and held in good faith reliance upon legal advice as to its buildability. We also readily find that the relief sought may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning chapter, on one condition. That is, one and only one dwelling unit may be built upon the lot, namely a single-family dwelling, for health's sake, absent public sewer and water in the Tom Nevers area and with lot size less than 80,000 SF. We further find that Variance relief is appropriate where necessary in the face of notably confused statutory language to carry out legislative intent. See David Mercer, "Conveyancer's Handbook". We also find that Applicant has no relationship of record with the original subdividers here.

10. More troublesome is the third finding requisite for proper Variance relief. We are mindful of a paper furnished counsel of record in 144-86 styled "Objections" by certain opponents to Variance relief. Counsel maintained that cases cited in that paper were inapposite. Not so clear are grounds for finding circumstances "especially affecting" the instant lot but not affecting generally the LUG-3 district, in the face of opponents' citations. In any event, opponents did not address the reading of Sections 139-33E and G, taken together as above. Here, the Planning Board made a favorable recommendation, and no other opposition was heard.

11. Accordingly, by UNANIMOUS vote, this Board GRANTS to Applicant the requested VARIANCE from SECTION 139-16A, to render the lot buildable subject to limiting the lot to one dwelling unit as set forth above.

Dated: December 18, 1986

Nantucket, MA 02554

Received
December 18, 1986
William R. Sherman
Town Clerk

William R. Sherman

William R. Sherman

Andrew J. Leddy Jr.

Andrew J. Leddy, Jr.

I CERTIFY THAT 20 DAYS HAVE ELAPSED AFTER THE DECISION
WAS FILED IN THE OFFICE OF THE TOWN CLERK, AND THAT
NO APPEAL HAS BEEN FILED, PURSUANT TO GENERAL LAWS
40A, SECTION 11

TOWN CLERK

C. Marshall Beale

C. Marshall Beale

March 10, 1987
William R. Sherman



DOCUMENT No. 39261

Northucket Registry District

MAR 13 1987

RECEIVED FOR REGISTRATION

1 O'CLOCK 38 ^m p ^M

Variance

DOCUMENT No. 39261

Northucket Registry District

MAR 13 1987

RECEIVED FOR REGISTRATION

1 O'CLOCK 38 ^m p ^M

NOTED ON CERTIFICATE NO. 12858
IN REGISTRATION BOOK 666 PAGE 108
ATTEST Sandra M. Chadwick ASST. RECORDER

BOARD OF APPEALS
TOWN OF NANTUCKET
NANTUCKET, MASSACHUSETTS 02554

DECISION:

The BOARD OF APPEALS, at a Public Hearing held on FRIDAY, FEBRUARY 7, 1987 at 1:30 p.m. in the Town and County Building, Nantucket, Massachusetts, made the following decision upon the Application of STEPHEN ERISMAN and BETSY MILLIKEN ERISMAN (014-87) of P.O. Box 934, Nantucket, Massachusetts 02554.

1. Applicants seek a VARIANCE from the 120,000 square feet minimum lot size requirements and ground cover ratio (3% maximum) requirements to render buildable a .51 acre lot. The premises are located at 73 TOM NEVERS ROAD, TOM NEVERS, Assessor's Parcel 75-136, L.C. Plan No. 5004-30, Lot 670 and zoned LIMITED USE GENERAL-3.

2. Our findings are based upon the Application papers, registered plans, chain of title for Lot 670, and representations and testimony pertinent to this matter at our hearing.

3. We find that the Lot came into existence in 1971 with the Planning Board's endorsement of a subdivision plan submitted under the Subdivision Control Law. In accordance with our By-Law Section 139-33G and the Massachusetts Zoning Act to which it conforms, the lot was governed by applicable zoning provisions in effect at the time of submission of the subdivision plan, and continued to be so governed for seven (7) years until 1978. When this protective zoning freeze period

expired in 1978, the Lot was subject to the 120,000 SF minimum lot size requirements and other intensity requirements for Lots zoned LUG-3.

4. Because our zoning By-Law became effective in ^{m10.} July, 1972, the Lot was, in fact, buildable until 1978 when the zoning "freeze" period expired. However, no building was built during this protective period.

5. We find that a Purchase and Sale Agreement for the Lot was entered into between the original developer, South East Quarter Corporation and one Anthony E. Delacano on March 28, 1972. A Notice of this Agreement was recorded at the Nantucket Registry District on April 26, 1972 as Document No. 13491 noted on Certificate of Title No. 6298. This Agreement was extended by a Notice dated May 3, 1973 and recorded as Document No. 14,403 at said Registry District. Anthony E. Delacono purchased the Lot and recorded his deed on July 10, 1974. The recording of the Delacono Notice of Purchase and Sale Agreement on March 28, 1972 at the Nantucket Registry District created a "trust relationship" between developer, Southeast Quarter Corp., and Delacono whereby the Seller held legal title only for the benefit of Delacono who was the equitable owner of the Lot. Because the Notice of Purchase and Sale Agreement was recorded prior to the effective date of our Zoning By-Law and the Lot was not held in common ownership at any time subsequent to 1974, we find that the lot was effectively held in ownership separate from that of adjoining land and the lot is a buildable lot which

is subject to the "lot of record" dimensional requirements set forth in Section 139-16 of our by-law.

6. In support of the Applicant's request for a Variance to validate the buildability and marketability of the Lot, we find the Applicants would suffer a severe hardship, financial and otherwise, if the Lot is deemed unbuildable, and that a variance may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the Zoning By-Law because any dwelling to be constructed on the Lot will be limited to a maximum ground of 1500 SF and will be subject to other dimensional requirements for "lots of record" set forth in Section 139-16 of the by-law. Further, such requirements reasonably limit the size of any structure which may be built on the Lot and ensure that such a structure will be proportionate to, and in harmony with, other houses in the Tom Nevers area.

7. We find further that the Lot is triangular in shape and unlike other lots in the Tom Nevers subdivision; this peculiar lot shape creates unique circumstances for the construction of a dwelling, septic system and well which especially affect this Lot and do not affect generally lots in the Limited Use General-3 zoning district.

8. Accordingly, by UNANIMOUS vote, this Board GRANTS to the Applicants a VARIANCE from Section 139-16A of the By-Law to render the lot buildable in accordance with the "lot of record" dimensional requirements set forth in Section 139-16 of the Zoning By-Law.

Dated: February 18, 1987
Nantucket, Ma. 02554

NANTUCKET BOARD OF APPEALS

Received
February 18, 1987
Heddy J. Perry
Town Clerk

By: William R. Sherman
William R. Sherman

Dale Waine
Dale Waine

I CERTIFY THAT 20 DAYS HAVE ELAPSED AFTER THE DECISION
WAS FILED WITH THE TOWN CLERK, AND THAT
NO APPEAL HAS BEEN FILED, PURSUANT TO GENERAL LAWS
40 A, SECTION 11

Dorothy Vollans
Dorothy Vollans

Heddy J. Perry
TOWN CLERK
March 12, 1987



DOCUMENT No. 39356

Madhubet Registry District

MAR 24 1987

RECEIVED FOR REGISTRATION
3 O'CLOCK 23 m P

Variance

DOCUMENT No. 39356

Madhubet Registry District

MAR 24 1987

RECEIVED FOR REGISTRATION
3 O'CLOCK 23 m P

NOTED ON CERTIFICATE NO. 11846
IN REGISTRATION BOOK
ATTEST Sandra McElwain ASST. RECORDER

~~COMMONWEALTH OF MASSACHUSETTS~~

Nantucket

City or Town

~~BOARD OF APPEALS~~

Date: January 30, 19 87

Certificate of Granting of Variance or Special Permit
(General Laws Chapter 40A, Section 11)

The Board of appeals of the City or Town of Nantucket

hereby certifies that a Variance or Special Permit has been granted

To Dorothy D. Maketa (004-87)

Address 32 Parchmont Drive

City or Town New Hope, PA 18938

affecting the rights of the owner with respect to land or buildings at 47 Tom Nevers Road, Tom Nevers, Assessor's par. 076-064, L.C. Plan 5004-44, Lot 725

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said variance — special permit, and that copies of said decision, and of all plans referred to in the decision, have been filed with the planning board and the city or town clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town or city clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.

William R. Shorman
Chairman
Andrea J. Ledyer Jr
Clerk

BOARD OF APPEALS
TOWN OF NANTUCKET
NANTUCKET, MASSACHUSETTS 02554

DECISION:

The BOARD OF APPEALS, at a Public Hearing held on FRIDAY, JANUARY 16, 1987 at 1:30 p.m. in the Town and County Building, Nantucket, made the following Decision upon the Application of DOROTHY D. MAKETA (004-87) address 32 Parchmont Drive, New Hope, PA 18938.

1. Applicant seeks a VARIANCE from the 120,000 SF minimum lot area and 200-foot frontage requirements of Zoning By-Law SECTION 139-16A to render buildable and, accordingly, marketable, a 1.20 acre lot with 200-foot frontage. The premises are located at 47 TOM NEVERS ROAD, TOM NEVERS, Assessor's Parcel 076-064, Land Court Plan 5004-44, Lot 725 and zoned LIMITED USE GENERAL-3.

2. In view of the similarity of legally-relevant facts, we refer to our Decision in prior Application 144-86. Our findings here are based upon the Application papers and correspondence in this record and representations and testimony pertinent to this matter at our hearing.

3. We are told that the lot came into existence with the developer's submission of the preliminary subdivision plan to the Planning Board (dated May 14, 1973) when the minimum lot size requirement for the district was still 50,000 SF, followed by the definitive plan of Nov. 17, 1973 endorsed March 22, 1974, when that requirement had been increased to 120,000 SF. Counsel for Applicant has provided us with evidence of the endorsement but not the date when written notice of the developer's submission was given to the Town Clerk. Nonetheless, the representation is uncontroverted that the developer's submission qualified the plan (and Applicant's lot) for the 7-year zoning protection specified in Section 139-33G.

4. "Grandfathering" rights were created by the final approval of the plan, evidenced by the Planning Board's endorsement of the subdivision plan submitted under the Subdivision Control Act. In accordance with our By-Law Section 139-33G and Mass. Zoning Act, Ch. 40A MGL §6 to

(Decision 004-87)

-2-

which it conforms, the lot was governed by the applicable zoning provisions in effect at the time of submission of the subdivision plan, and continued to be so governed for 7 years until 1981. When this protective zoning freeze period expired in 1981, the lot was subject to the same 120,000 SF minimum lot size and 200-foot frontage requirements as are currently in effect. (Absent such freeze, the requirement would have applied from August, 1973.)

5. Since 50,000 SF was the minimum lot size at the time of the preliminary plan submission, the lot was neither non-conforming nor unbuildable prior to 1981. However, no building was built during this protective period. (Since 1972 only single-family dwellings have been permitted in LUG-3.)

6. The initial paragraph of our intensity regulations, Section 139-16A, provides that:

"No building shall be constructed and no building... shall be used ... unless in conformity with the requirements set forth below:"

including, for LUG-3, the 120,000 SF minimum lot size (with reference to a "grandfathering" footnote) and 200-foot frontage (here, Applicant meets the requirement). Applicant's counsel argued that the lot has been buildable since 1981, notwithstanding this provision because of the footnote which he reads as if it said:

"Any lot lawfully laid out by plan, or deed duly recorded ... pursuant to the Subdivision Control Law before the effective date of this chapter" (mid-1972) ... or of a more restrictive amendment ... "may be built upon although the lot contains less than the required minimum lot area, provided that such lot was held in ownership separate from that of adjoining land ..." before the date the protective freeze period expired. (Emphasis added.)

The two phrases, outside the quotation, are not supported by any citation of case law but were apparently imputed into the text prior to the 1980's by the Nantucket Bar in their real estate practices. Lacking legal precedent, we are unable to change the plain language of the footnote to render Applicant's lot buildable.

7. We should note here our findings that the lot was held in common ownership at least until October 21, 1976 when Applicant's predecessor (Arthur Buckley et al) purchased it (see Certificate 7761). Applicant took title about March 29, 1985 believing then that the lot was buildable on advice of counsel, paying about \$60,000 according to the Assessor's records.

8. Upon the alternative basis of "grandfathering" Section 139-33E, we believe that Applicant's lot is legally buildable. Here, we must rely on case law. This Section incorporates the confused language of Ch. 40A MGL §6 and would fully conform to the State Zoning Act if the following were added at the end of the first sentence:

"but at least 5000 SF of area and 50 feet of frontage".

This first sentence provides that:

"Any increase in area ... requirement shall not apply to a lot for single ... family residential use, which at the time of recording or endorsement whichever occurs sooner, was not held in common ownership with any adjoining land, conformed to then-existing requirements and had less than the proposed requirement of area and frontage."
(Emphasis added.)

As we understand the case law, the underlined phrase is, by intention, to be read as requiring that (a) the lot conform as to minimum lot size (and frontage) when it was legally created (true here), and (b) the most recent title instrument(s) of record prior to the effective date of the zoning requirement (e.g., lot size or frontage, to which the lot does

not conform) must show that the lot was separately owned. *Adamowicz v. Ipswich*, 395 Mass. 757 (1985).

9. For the LUG-3 zoning district generally, the effective date of the 120,000 SF and 200-foot frontage requirements was in mid-1973. For Applicant's lot, however, no zoning requirement existed until 1981. At that date, those requirements came into force with expiration of the zoning freeze period. But by then, the title instruments of record showed the lot to be separately owned. The legal consequence of this interplay between grandfathering Sections 139-33E and G is that Applicant's lot is buildable.

10. Nonetheless, Applicant's counsel urges that we grant the requested relief by Variance to avoid further question, to validate that the lot is buildable and so marketable as such. A severe hardship, financial and otherwise, is readily found where the lot has been thus purchased and held in good faith reliance upon legal advice as to its buildability. We also readily find that the relief sought may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning chapter, on one condition. That is, one and only one dwelling unit may be built upon the lot, namely, a single-family dwelling, for health's sake, absent public sewer and water in the Tom Nevers area and with lot size less than 80,000 SF. We further find that Variance relief is appropriate where necessary in the face of notably confused statutory language to carry out legislative intent. See David Mercer, "Conveyancer's Handbook". We also find that Applicant has no relationship of record with the original subdividers here.

11. More troublesome is the third finding requisite for proper Variance relief. Not so clear are grounds for finding circumstances "especially affecting" the instant lot but not affecting generally the LUG-3 district, in the face of such citations: *Paulding v. Bruins*, 470 NE2d, 398 (Mass. App. 1984) and *McCabe v. Zoning Board of Appeals of Arlington*, 413 NE 2d 358 (Mass. App. 1980). ^{cf} *Grosby v. Board of Appeals of Weston*, 323 NE 2d 772, 3 Mass. App. 713 (1975) where a variance was sustained.

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In any event, we find Applicant's lot to be buildable per our reading of Sections 139-33E and G, taken together as above. Here, the Planning Board made a favorable recommendation, and the only opponent simply urged no relaxation of the zoning requirement.

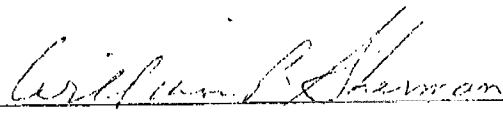
12. In the present circumstances, the unusual shape of Applicant's lot (compare adjacent lots of comparable size) provides requisite uniqueness within the LUG-3 zoning district upon which to foot our finding of the requisite hardship.

13. Accordingly, by UNANIMOUS vote, this Board GRANTS to Applicant the requested VARIANCE from SECTION 139-16A, to render the lot buildable subject to limiting the lot to one dwelling unit as set forth above.

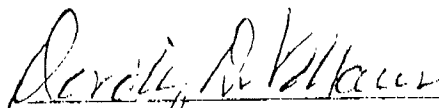
Dated: January 30, 1987

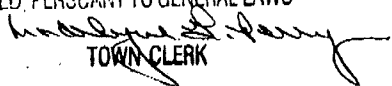
Nantucket, MA 02554

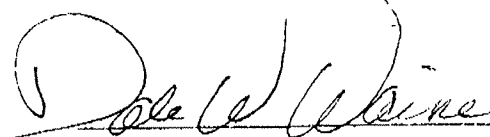
Received January 30, 1987
Madeline D. Perry
Town Clerk


William R. Sherman

I CERTIFY THAT 20 DAYS HAVE ELAPSED AFTER THE DECISION
WAS FILED IN THE OFFICE OF THE TOWN CLERK, AND THAT
NO APPEAL HAS BEEN FILED, PURSUANT TO GENERAL LAWS
40A, SECTION 11


Dorothy D. Vollans


TOWN CLERK


Dale W. Waine

March 24, 1987