



ZONING BOARD OF APPEALS

2 Fairgrounds Road
Nantucket, Massachusetts 02554
www.nantucket-ma.gov

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

~~ MINUTES ~~

Thursday, April 13, 2023

Public Safety Facility, 4 Fairgrounds Road, Community Room –1:00 p.m.

This meeting was held via remote participation using ZOOM and YouTube.

Called to order at 1:08 pm and announcements made by Ms. McCarthy

Staff in attendance: William Saad, Land Use Specialist; Leslie Snell, Deputy Director of Planning; Paul Murphy, Building Commissioner

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

Absent: Poor

Agenda adopted by unanimous consent

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

Vote Carried unanimously

I. APPROVAL OF MINUTES

1. February 9, 2023

Botticelli – On page 4, there is a comment where I say “biblical piles” and it should say “helical piles”. On page 5, there is another statement by me that says “when you go to the basement and add a bathroom” and it should read “add a bedroom”

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

Vote Carried unanimously

II. UPDATE

1. Surfside Crossing 40B

Discussion (6:36) **Snell** - Update for the board and the public relative to the Surfside Crossing 40b. They have chosen to proceed at their own risk while the HAC appeals are still pending. We received the final plan set in the office on March 22nd and I have distributed those to the applicable Town staff for review, and also the engineer for his final review and that will be scheduled for your May 11th ZBA meeting. It is a 90-day review period, which is outlined in the decision and in the HAC decision, so that's the window that you have to work with.

Botticelli – What is that 90-day date?

Snell – Not sure but it started on March 22nd.

Botticelli – Has anybody reviewed the plans? Can I ask questions?

McCarthy – We were just going to do an announcement today. Leslie, what do you think?

Snell – If the Board has questions, that's fine.

Botticelli – Questioning the letter from Dennis Murphy. Have the 25 items in the conditions been received?

Snell – Comments that we have already received and will receive will be distributed to you in your agenda packet for May 11th. Comments weren't distributed today because they were not a discussion item.

Botticelli – Okay, if you can just update us on the 90-day date as well

Mondani – The town is in a suit right?

Snell – Currently, yes.

Mondani – Is there anything the town is going to do with regard to a stay?

Snell – I can't really speak to that.

III. EXECUTIVE SESSION

1. The Board may entertain a motion to go into executive session under G.L.c.30A, §21(a)(3) for the purpose of discussing strategy with respect to litigation regarding Appeal of Special Permit by Guy Maddalone (ZBA No. 17-21), where the Chair has determined that an Open Session Meeting may have a detrimental effect on the litigating position of the Board.

Motion Motion to Enter into Executive Session for the reasons stated at 1:19 PM and to go back into open session upon completion. (made by: O'mara) (seconded by: Mondani)

Vote Carried unanimously: McCarthy – aye; Allen – aye; O'mara – aye; Mondani – aye

Motion Motion to Leave Executive Session at 1:42 PM. (made by: Allen) (seconded by: O'mara)

Vote Carried unanimously: McCarthy – aye; Allen – aye; O'mara – aye; Mondani – aye

IV. OLD BUSINESS

1. 09-22 Harris on Weweeder, LLC 50 Weweeder Avenue Brescher
CONTINUED to May 11, 2023
2. 20-22 Steve L. Cohen & Christopher P. Choma, Trs. 29 Monomoy Rd Nominee Trust, 29 Monomoy Road Cohen
CONTINUED to May 11, 2023
3. 37-21 Kristina & Nicholas Amendolare 8 Bank Street Williams
Applicants are seeking a Special Permit pursuant to Nantucket Zoning Bylaw Sections 139-30 and 139-33A in order to make renovations, including an addition, to a single-family dwelling that is pre-existing non-conforming to the setbacks. Locus is situated at 8 Bank Street, shown on Assessor's Map 73 and Parcel 69. Evidence of owner's title is recorded in Book 1770, Page 216 on file at the Nantucket County Registry of Deeds. The site is zoned Sconset Old Historic (SOH).
Voting McCarthy, Botticelli, O'Mara, Allen, Mondani
Alternates: None
Recused: None
Representing: Attorney Michael Wilson
Jeff Blackwell, Blackwell & Associates
Wayne McArdle, engineer
Public: Attorney Jon Fitch, for the Gardners
Ann Ramsey Gardner, 9 Broadway
Attorney Sarah Alger for Wilhemina Austin 11 Broadway
Margret Van Deusen, 7 Front Street
Lisa Soeder 13 Broadway
Discussion
Attorney Michael Wilson - This is a request for a special permit involving a pre-existing non-conforming setback being about 12 square foot triangular portion of the roof plane. We've been discussing various aspects of how the construction will be implemented to mitigate or prevent any negative impacts in the neighborhood at previous meetings. My clients have engaged McArdle Associates and Mr. Wayne McArdle is here to address any additional questions or any follow-up that you may have.
Mondani - Clarification on this non-conformity. Can the roof be resolved without relief?
Wilson – Cutting the triangular portion of the building off would compromise what is already a very small structure with very little usable space.
Botticelli - Questioned ruling from the health department - staff recommendation that says that no basement bedroom can be added?
Wilson – Asked that the opinion letter not be part of the zoning board of appeals review. Has done some independent research with respect to applicable sewer districts, this property may benefit from sewer in the not-too-distant future.
Botticelli - Questioned if adding a bathroom in the basement would classify it as a bedroom, but noted that the septic system cannot be expanded beyond its approved capacity for one bedroom.
Wilson – Stated zoning relief requested is not for the number of bedrooms.
Allen – Questioned septic size
Wilson – Septic is a new title five. The variance in place was for the upgraded Title Five.
Botticelli – Questioned if the basement is feasible based on Health Department letter, and that is a big part of the discussion relative to the safety of the roads.
Wilson - The basement is not going to be a portion of the zoning relief that's currently requested.
Botticelli - But it affects the means and methods of construction.
Wilson - It does and the Board received information from the engineer on how they will shore up. It's possible to do this with the means and methods that Mr McArdle has presented without causing any compromise to the neighborhood.

McCarthy - The very small triangle is triggering the need for zoning relief but when zoning relief is triggered, we typically look at the project as a whole. The bigger concern for me in this Board of Health opinion was that they are saying any work to the house will affect the structural integrity of the septic tank

Allen - It's new construction and the new construction doesn't go with what was approved for the septic

McCarthy - Board of Health will deal with that portion. If the project was only doing something in that one little area then we would look at that area but this is a whole project involving more than the triangular portion.

Wilson - Agreed that Board of Health will review the septic.

Jeff Blackwell - There's going to be an article placed on the fall special town meeting to expand the Sewer District to include this property. The simple solution is to connect this property to the sewer that's on Front street directly above the property. If voted through a town meeting it becomes a simple sewer connection design of a single dwelling.

Botticelli - Questioned if sewer would need to be expanded down Front street to site.

Blackwell - Sewer doesn't have to be expanded down Front Street, already a gravity sewer line at Front Street.

O'Mara - Everything that we've heard from Mr. Blackwell makes a lot of sense. If we Grant the permit, the town may decide not to expand sewer. If the town doesn't approve it, then they're going to be using that house as it currently sits.

Botticelli - The basement would require a new variance from the Board of Health.

Mondani - Concerned scope is going beyond "substantially more detrimental". The septic issue is for the Health Department to determine.

O'Mara - Not voting on whether the applicant can build it and wouldn't want to handicap that. As far as Zoning Board, I think they've given the information we've requested.

Botticelli - basement adds a lot more complexity to this project. Until sewer is an option, the septic is part of our discussion and part of the whole discussion.

McCarthy - If we're comfortable with the means and methods, and conditions to be added, I want to make sure the decision is clear and limited to our purview.

Allen - Doesn't want to deny and disable them from doing other things with the property.

McCarthy - This project will have to go through other boards for final approvals. Our scope is focused on the Triangular 12 square feet but also the means and methods. If we deny, approve, or continue, it needs to be based on the means and methods. The information we have about septic is informative but our decision can't be based on that.

Botticelli - Questioned if the retaining wall is staying in place, how will piles be installed.

Wayne McArdle - Existing CMU blockwall will stay in place. House will be removed from the site, the wall will be cut to drill the piles into place. It'll be shored with timberlagging and the west side will be reinforced with a new wall. The existing wall with a new wall that will be used as the outside form for the new foundation.

O'Mara - Questioned if house will be moved off-site

McArdle - the house is going to be removed off-site during construction.

Wilson - It has to be relocated in order to install the Shoring of the of the bank and the installation of the foundation. This will all have to go through Town of Nantucket permitting.

O'Mara - questioned discrepancy about materials and testimony regarding turning or moving the house.

Botticelli - Questioned if there are concerns of vibration from drilling.

McArdle - Almost little or no vibration, we're bracing it internally based on abutter's concern

Allen - Stated there will be vibration

Attorney Jon Fitch - Represents Jeffrey and Ann Gardner of nine Broadway LLC. The conclusion of the Health Department document is that there is simply not a safe setback of the tank and that is relevant to your determination about whether or not this project is detrimental to the neighborhood. Client filed a letter on 4/10 from their own geotechnical consultant. Their letter states that the applicant has not adequately responded to issues raised and supports that the neighborhood is at risk and there is a reasonable basis to conclude that the neighborhood would suffer a detrimental impact.

Ann Gardner - the construction risks remaining are implementation risk. There will be a difference of over 30 feet between the bottom of the excavation and Front Street. Pumping effluence up that high is unrealistic per our geotechnical engineer. If basement is added, there's no leaching cyst area under the house now it will go beyond the site. This project is a small vacation rental home for one family and would put a neighborhood and historic district at risk.

Margaret Van Deusen - Stated that her house does not have a foundation and the house is supported on the bank itself by concrete pillars of indeterminate age. The risk is that it will destabilize the bank and damage houses. Whether something could happen at town meeting down the road is highly speculative.

Blackwell - Indicated a variance from the Board of Health for new septic is no longer an option. We have to tie to town sewer, which are routinely expanded at Town Meetings. Nothing technically difficult about pumping sewage up a hill.

Attorney Sara Alger - Agree with gardeners, their counsel and appreciates and agrees with Mr Blackwell's comments on the septic system. If the Board is inclined to approve it then it should be conditional upon the property being brought into the Sewer District and a sewer connection being made.

McCarthy - Surprised there won't be a basement unless they can tie into sewer. Doesn't see point in approving this if it can only happen at some point down the road at town meeting.

Allen - Agrees but doesn't want to deny it and disable them from coming back for two years. Also don't want to approve without knowing if there will be sewer access.

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Snell – The Board has veered outside of its jurisdiction, but all you need to make is a substantially more detrimental finding. Stick to your jurisdiction and the burden is on them to get additional relief as needed from the appropriate Board. Follow the Zoning Bylaw and apply appropriate conditions or decide that you don't think it's appropriate and deny it.

McCarthy - If we are going to entertain a motion today, we do have some conditions to talk about

Mondani – For clarification, you cannot build the basement without the septic approval?

Wilson – We would need a variance from the Board of Health to locate the foundation that's proposed within the proximity of the existing septic tank.

Lisa Soder - Stated her house is at the top of Middle Gully Road. The new information submitted today concerning the possibility of town sewer being available does not change anything. The pilings are 10 feet below the basement which is 10 feet below the plane and could jeopardize the bank.

McCarthy - Questioned if there is a list for standard conditions that for a project like this?

O'Mara - Thinks Board can make an approval subject to the approval of conditions that don't currently exist because we have to go back and review all documents submitted.

Snell – It's an option to vote to approve a project, close the public hearing, and draft a decision for just the board to review and comment on at the next meeting. Closing the public hearing closes down any new public comments and new information from being submitted.

Alger - do you know when your action deadline is?

McCarthy - June 22nd

Motion	Motion to close the public hearing. (made by: Botticelli) (seconded by Allen)
	Motion to have a draft Decision with conditions to review at May 11 meeting. (made by: Allen) (seconded by O'mara)
Vote	Carried unanimously

V. NEW BUSINESS

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| 1. 10-22 Paul P. Moran & Jean M. Moran | 4 Washington Avenue | Santos |
| CONTINUED to May 11, 2023 | | |
| 2. 17-22 Nantucket Cottage Hospital | 16 Vesper Lane | Erickson |
| CONTINUED to May 11, 2023 | | |
| Voting | McCarthy, Botticelli, O'Mara, Allen, Mondani | |
| Discussion | Not opened at this time. | |
| Motion | Motion to continue 09-22, 20-22, 10-22, 17-22. (made by: Mondani) (seconded by: O'mara) | |
| Vote | Carried unanimously | |

VI. OTHER BUSINESS

1. None

VII. ADJOURNMENT

Motion	Motion to Adjourn at 3:05 pm. (made by: Mondani) (seconded Botticelli)
Vote	Carried unanimously

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

1. None

Submitted by:
Billy Saad