



# Planning and Land Use Services

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

**Date:** 05/03/2023  
**To:** Zoning Board of Appeals  
**From:** Billy Saad  
Land Use Specialist  
**RE:** Staff Report for 05-11-23 ZBA Meeting

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## III. APPROVAL OF THE MINUTES: 04/13/23

**Staff reviewed the minutes. We recommend approval.**

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## IV. SURFSIDE CROSSING FINAL SITE PLAN/ ENGINEER REVIEW AND REVIEW CONDITIONS

Pages 40-114

**Staff provided the Board with paper copies of plans for technical review. Comments from Town departments are included on pages 41-48 in the packet, and the consulting engineer's report is included on pages 55-98 in the packet.**

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

Pages 13-15

**37-21 Kristina & Nicholas Amendolare**  
*Action Deadline: June 22, 2023*

**8 Bank Street**

**Williams**

*Sitting: SM, LB, MO, EA, JM*

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 draft Decision is attached at the end of the staff report on pages 5-10.**

**09-22 Harris on Weweeder, LLC**  
*Action Deadline: June 16, 2023*  
***Continued to June 08, 2023***

**50 Weweeder Avenue**

**Brescher**  
*Sitting: SM, EA, MO, GT, MP*

**20-22 Steven L. Cohen & Christopher P. Choma, Trs. 29 Monomoy Rd Nominee Trust,** **Cohen**  
*Action Deadline: June 22, 2023*  
***Continued to June 08, 2023***  
*Sitting: SM, LB, EA, JB, JM*

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

**10-22 Paul P. Moran & Jean M. Moran** **4 Washington Ave** **Santos**  
***Continued to June 08, 2023***

**17-22 Nantucket Cottage Hospital** **16 Vesper Lane** **Erickson**  
***Continued to June 08, 2023***

Pages 18-38

**06-23 NOB ACK, LLC** **2 Nobadeer Way** **Cohen**  
Applicant is seeking Variance relief pursuant to Zoning Bylaw Section 139-32(A) allow for a *temporary* fourth dwelling on a lot while a new dwelling is being built, and Special Permit relief under Section 139-33.A(1)(a) for the alteration or expansion of a preexisting nonconforming structure as close as 0.1 foot from the lot line in the rear yard setback. The locus is situated at 2 Nobadeer Way, shown as Assessor's Map 68, Parcel 113, which is shown as lot 12 on Land Court Plan 16514-F. Evidence of owner's title is registered on Certificate of Title No. 26263 at the Nantucket Registry District of the Land Court. The site is zoned Residential 10 (R10)

**The Applicant is seeking Variance relief for a temporary waiver to exceed the number of dwellings allowed on a lot. The locus is currently zoned Residential 10 Limited (R-10L) and complies with lot size, frontage, and ground cover ratio. The cottage is preexisting nonconforming to the rear yard setback and four (4) perimeter sheds are all located within the setbacks. Applicant stated in the addendum that the sheds will be relocated to comply with setback requirements. Applicant also stated that the temporary waiver is being sought to allow for the construction of a new primary dwelling with an attached tertiary dwelling in order to not displace year-round tenants that currently occupy the existing dwelling. Staff notes the ZBA plan on **page 35** of the packet does not reflect the addendum as the new structure is listed as "Duplex" and the cottage does not depict proposed addition or alterations. Through email, attached on **page 4** of the staff report, the applicant is withdrawing the additional relief requested under Section 139-32(A) of the Bylaw.**

**This is an unprecedented request as the Bylaw has no definition for a "temporary dwelling". Staff requests the Board determine if the merits of the application would qualify as a use variance, which is not allowed per Section 139-32.B(2) of the Bylaw, which reads,**

**B.**

**Conditions and limitations upon variances.**

**(1)**

**The Board of Appeals may impose conditions, safeguards and limitations, both of time and of use, including the continued existence of any particular structures but excluding any condition, safeguards or limitation**

based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner.

(2)

No variance may authorize a use or activity not otherwise permitted in the zoning district in which the land or structure is located

MGL 40A section 10 states, in part, that “except where local ordinances or bylaws shall expressly permit variance for use, no variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located.

The lot is subject to a use freeze based on the R-20 Zoning District as described in the addendum

| Use                | Town Residential Districts |            |                       |                                       |                         |      |  |
|--------------------|----------------------------|------------|-----------------------|---------------------------------------|-------------------------|------|--|
|                    | R-1<br>SR-1                | ROH<br>SOH | R-5<br>R-5L           | R-10<br>R-10L<br>SR-10                | R-20<br>SR-20           | R-40 |  |
| Primary dwelling   | Y                          | Y          | Y                     | Y                                     | Y                       | Y    |  |
| Secondary dwelling | Y                          | Y          | Y<br>SP<br>R-5L       | Y<br>SP<br>R-10L                      | Y                       | Y    |  |
| Accessory dwelling | Y                          | Y          | Y                     | Y                                     | Y                       | Y    |  |
| Tertiary dwelling  | N                          | N          | Y<br>R-5<br>N<br>R-5L | Y<br>R-10<br>N<br>R-10L<br>N<br>SR-10 | Y<br>R-20<br>N<br>SR-20 | Y    |  |
| Apartment          | N                          | N          | N                     | N                                     | N                       | N    |  |

07-23 CHARLES B. JOHNSON  
Continued to June 08, 2023

4 Harbor Square

Alger

## VII. OTHER

### REMAND PUBLIC MEETING

Decision for Special Permit Application ZBA File No. 17-21 Guy & Diane Maddalone

Town council will be present at the meeting.

## VIII. ADJOURNMENT (VOTE WILL BE TAKEN)

**From:** [Steven Cohen](#)  
**To:** [William Saad](#)  
**Subject:** RE: 2 Nobadeer Way  
**Date:** Thursday, May 4, 2023 7:00:47 PM  
**Attachments:** [image001.png](#)

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CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Billy,

I spoke to my clients.

I will get a new plan that corrects the label from Duplex to Dwelling with Attached Tertiary.

Also, my client had come up with plans to do an addition to the front/south side of the house instead of the east side, so we will not need that portion of the relief applied for, to expand within the setback.

We plan to go forward in May. Best,

Steven

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**From:** William Saad <[wsaad@nantucket-ma.gov](mailto:wsaad@nantucket-ma.gov)>

**Sent:** Wednesday, May 3, 2023 4:22 PM

**To:** Steven Cohen <[steven@cohenlegal.net](mailto:steven@cohenlegal.net)>

**Subject:** 2 Nobadeer Way

Hi Steven,

I'm a little concerned about the ZBA plan that was submitted for 2 Nobadeer Way and would like to get an updated plan prior to the public hearing. The plan still shows the new structure as a "duplex", which could create an issue or at least prevent the Board from rendering a decision because the plan differs from the request (even though the addendum clarifies the primary dwelling with attached tertiary). The proposal for the cottage is straightforward, but the plan does not show the proposed addition/alteration. I'm sorry to be reaching out so close to the meeting but do you think you can get me a revised plan with those changes before the meeting? If not, I think this matter should continue to the June meeting.

Best,

[Billy Saad](#)  
Land Use Specialist

[wsaad@nantucket-ma.gov](mailto:wsaad@nantucket-ma.gov) Town of  
Nantucket

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

Assessor's Map 73.1.3, Parcel 69  
8 Bank Street  
Sconset Old Historic (SOH)

Book 1770, Page 216  
No Plan of Record

1. At a public hearing of the Nantucket Zoning Board of Appeals ("ZBA"), opened at 1:00 P.M. on Thursday, December 9, 2021, and continued to Thursday, February 10, 2022, Thursday, May 12, 2022, Thursday, November 10, 2022, Thursday, February 9, 2023, and closed on Thursday, April 13, 2023, in order for a Decision to be submitted and voted on Thursday, May 11, 2023, in the Conference Room, at 4 Fairgrounds Road, Nantucket, Massachusetts, the Board made the following Decision on Thursday, May 11, 2023 on the Application of **Kristina & Nicholas Amendolare**, c/o Michael Wilson, Esq., 1 Hooper Farm Road, Nantucket MA. 02554, **File No. 37-21**.

2. Applicants are seeking relief by SPECIAL PERMIT pursuant to Nantucket Zoning By-law Section 139-30 (special permit) from the provisions of Section 139-33A(1)(a) (Preexisting, nonconforming uses, structures, lots). Applicants received Historic District Commission ("HDC") approval in Certificate of Appropriateness ("COA") #2021-05-3626 on September 7, 2021, to make renovations to an existing single-family dwelling.

Modifications include adding second-floor space to move the one (1) existing bedroom upstairs with a full bath and constructing a one-story addition on the northerly side of the structure. Height would increase to 20± feet. Groundcover would be increased from 27.7% ± (390 SF ±) to 40% ± (560 SF ±). The zoning district was changed from SR-1 to SOH which allows a maximum groundcover of 50%, a zero front yard setback, and requires a minimum of a 5-foot side and rear yard setback for this lot. Relief is sought to increase the height of the dwelling within the required 5-foot rear yard setback area without coming any closer to the westerly lot line than the existing structure. The second-floor small addition would be constructed over the existing footprint. Only a southerly portion of the existing dwelling is sited within the rear yard 5-foot setback area, with the structure being sited as close as about 1.7 feet at its closest point on the southwesterly corner. In addition to the rear yard setback intrusion, the Locus is pre-existing nonconforming as to lot size with the lot containing about 1,409 SF of area with the locus conforming as to all other setback and groundcover requirements other than noted above.

The Locus, an undersized lot of record, is situated at 8 Bank Street and is shown on Nantucket Tax Assessor's Map 73.1.3 as Parcel 69. Evidence of owner's title is in Book 1770, Page 216 on file at the Nantucket County Registry of Deeds. The property is zoned Sconset Old Historic (SOH).

3. Our Decision is based upon the Application and accompanying materials, and representations and testimony received at our public hearings. There was no Planning Board recommendation, on the basis that no matters of planning concern were presented. Neighborhood opposition, both written and oral, was presented at the public hearings.

Over the course of the six (6) hearings, the ZBA heard neighborhood opposition to the project from Abutters, Abutter's Counsel, Abutter's Engineering Professionals, and residents of Sconset. Several letters expressing similar concerns were also submitted into the file. These concerns related to the impact of the construction of the new foundation on their houses above the locus sited on the bluff and the size and architectural design of the additions. Site constraints would affect the construction methodology of the foundation and

potentially jeopardize the integrity of Middle Gulley Road, a sloped public right of way abutting the property and homes in the surrounding area. Opposition ultimately rested on the contention that the proposed alterations would be substantially more detrimental to the neighborhood than the existing nonconforming setback distance of the raising of the southwesterly triangular portion of the structure that was sited within the required five-foot rear yard setback area for the following reasons: the excavation and process of putting in a basement foundation poses a danger to the integrity of Middle Gulley Road and could potentially cause damage to adjacent lots and the structures thereon; the intensification of use of a very small house on a very small lot will overburden the property and surrounding areas; and, construction of the new full foundation would violate septic requirements. The Health Department submitted an opinion that a second bedroom would not be possible due to site restrictions and a full foundation within a proscribed distance to the septic tank would be a violation.

4. Attorney Michael Wilson represented the Applicants at the public hearings. Additional testimony regarding this project in favor of the Application was received from Kristina Amendolare (owner), Linda Williams (Consultant), Angus Macleod (Designer), Wayne McArdle (Site Engineer), and Jeff Blackwell (Registered Land Surveyor). The Locus is shown on the Plan entitled, "Proposed Conditions Site Plan to Accompany Zoning Board of Appeals Application", ("Plan") dated November 9, 2021, prepared by Blackwell & Associates, Inc., a reduced copy of which is attached herewith as "Exhibit A". The project is benefited by an approval by the Nantucket Historic District Commission ("HDC") in Certificate of Appropriateness No. HDC2021-05-3625. The structure was present on the lot by 1935 and had various uses in it. A later addition was made several years ago, and it was converted to a single-family dwelling. The structure, as modified during a period prior to the 1972 enactment of the Nantucket Zoning By-law, has remained unchanged and unaltered.

5. Applicants' representatives stated that best practices would be consistently and reliably applied to this renovation project, particularly the during construction of the new foundation, the matter of most concern to the neighbors. To mitigate any potential damage to surrounding abutting properties, the Applicants' engineer proposed to install the piles with a drilling method rather than the driving method to reduce the vibratory impact on Middle Gulley Road and the surrounding structures. It was further explained that the work will be done according to all applicable building code regulations, and all applicable Town agencies will review the proposed project prior to the issuance of a building permit. A survey of the surrounding structures will be done. As a portion of the support wall for Middle Gulley Road lies on the locus it will be supported and shored up, not removed. A thorough inspection of the road has been done by the site engineer and the project. monitored during the construction of the new foundation. Only one bedroom is proposed unless the property is benefited by public sewer.

6. Based upon the testimony received at the Public Hearings, the site plan, the construction methodology, and the related engineering plan, the ZBA determined that the requested special permit relief for the small vertical increase in the ridge of that small portion of the structure that is sited within the southwesterly setback area may be granted based upon the findings that the proposed project will not make the existing nonconforming 1.7-foot setback distance more nonconforming and will not be substantially more detrimental to the neighborhood than the existing nonconformities, provided that the construction methodology is strictly adhered to in order to avoid damage to neighboring properties. Furthermore, the ZBA acknowledges that they have no jurisdiction over issues related to septic systems because the Health Department reviews all projects that are serviced by a septic system.

7. Accordingly, based by a **UNANIMOUS** vote, the Zoning Board of Appeals GRANTS the requested relief by **SPECIAL PERMIT** pursuant to Zoning Bylaw Section 139-33.A(1) in order to alter the pre-existing nonconforming single-family dwelling as proposed. The relief is conditioned upon the following:

- a. The proposed alterations and expansion shall be done in substantial conformity with the plans approved by Nantucket Historic District Commission Certificate of Appropriateness No. HDC2021-05-3625, as the same may be amended from time to time;
- b. The project shall be done in accordance with the "Proposed Conditions Site Plan to Accompany Zoning Board of Appeals Application", dated November 9, 2021, prepared by Blackwell & Associates, Inc., a reduced copy of which is attached herewith as "Exhibit A";
- c. There shall be no further expansion of the structure within the required 5-foot rear yard setback area without further relief from the ZBA;
- d. The General Contractor, Site Manager, and/or Construction Supervisor will provide all contact information to the Zoning Administrator and any neighbors who request it;
- e. Middle Gulley Road will not be used for parking of construction vehicles or any vehicles related to the project; and,
- f. There shall be no exterior construction related to this specific project between Memorial Day and Labor Day of any given year.

**SIGNATURE PAGE TO FOLLOW**

Assessor's Map 73.1.3, Parcel 69  
8 Bank Street  
Sconset Old Historic (SOH)

Book 1770, Page 216  
No Plan of Record

Dated: May, 2023

\_\_\_\_\_  
Susan McCarthy

\_\_\_\_\_  
Lisa Botticelli

\_\_\_\_\_  
Elisa Allen

\_\_\_\_\_  
Michael O'Mara

\_\_\_\_\_  
James Mondani

*COMMONWEALTH OF MASSACHUSETTS*

County of Nantucket, ss

On the \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared \_\_\_\_\_, one of the above-named members of the Zoning Board of Appeals of Nantucket, Massachusetts, personally known to me to be the person whose name is signed on the preceding document, and acknowledged that they signed the foregoing instrument as their free act and deed and voluntarily for the purposes therein expressed.

\_\_\_\_\_  
Official Signature and Seal of Notary Public  
My commission expires:



