



ZONING BOARD OF APPEALS

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

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

~~ MINUTES ~~

Thursday, November 9, 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 1:04 pm and Announcements made by Ms. McCarthy

Staff in attendance: Nicky Sheriff, Administrative Specialist; William Saad, Land Use Specialist
Attending Members: McCarthy, O'Mara, Brescher, Marcklinger, Botticelli, Poor, Mondani
Remote attendance: None
Absent: Allen
Late Arrivals: -
Early Departures: -
Town Counsel: -

APPROVAL OF AGENDA

Agenda adopted by unanimous consent

Motion: **Motion to Approve the agenda.** (made by: Brescher) (seconded by: O'Mara)
Vote: Carried unanimously

I. APPROVAL OF MINUTES

1. April 13, 2023; May 30, 2023; June 13, 2023; October 19, 2023

Motion: **Motion to Approve as drafted.** (made by: Brescher) (seconded by: O'Mara)
Vote: Carried unanimously

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

1. 09-22 Harris on Weweeder, LLC 50 Weweeder Avenue Brescher
Continued to December 14, 2023

Applicant is seeking Variance relief pursuant to Nantucket Zoning Bylaw Section 139-32 from the intensity regulations in Section 139-16A to site a proposed pool cabana in the side yard setback as close as 2.7 feet from the side yard lot line in a zoning district that requires a minimum of a ten (10) foot side yard setback and to increase the allowable groundcover ratio to 7.9% in a zoning district with a maximum groundcover ratio of 7%. Locus is situated at 50 Weweeder Avenue, shown on Assessor's Map 79 as Parcel 15 and upon Land Court Plan 42927-A. Evidence of owner's title is registered on Certificate of Title No. 27684 with the Nantucket County District of the Land Court. The site is zoned Limited Use General 1 (LUG-1).

2. 20-22 Steven L. Cohen & Christopher P. Choma, Trs. 29 Monomoy Rd Nominee Trust, Cohen
Continued to December 14, 2023

Applicant is seeking Variance relief pursuant to Zoning Bylaw 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).

Motion: **Motion to grant continuance.** (made by: Botticelli) (seconded by: Marcklinger)
Vote: Carried unanimously

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

1. **13-23 Surfside Drive, LLC** **5 Surfside Drive** **Beaudette**

Voting: McCarthy, Brescher, O'Mara, Marcklinger, Botticelli
Representing: **Richard Beaudette**, Esq., Beaudette and Swain

Public: Michael Misurelli, 3 Surfside Drive
Grant Sanders, 14 Dennis Drive

Discussion: **Beaudette** – Presented an application, seeking a modification of a Special Permit pursuant to Nantucket Zoning Bylaw Section 139-33 in order to alter and expand the pre-existing, nonconforming use by tearing down the existing commercial structure on the premises and replacing it. Locus is situated at 5 Surfside Drive, shown on Assessor's Map 67, Parcel 251 and shown as Lot 29 on Land Court Plan 26439-H. Evidence of owner's title is registered on Certificate Title No. 27168 with the Nantucket County District of the Land Court. The site is zoned Residential-10 (R10).

McCarthy - Raised concerns about the balance between adding living space and reducing commercial space.

 - Raised concerns about the potential lack of privacy in shared living spaces and the unpredictability of occupants.
 - Questioned the contradiction between designating residential parking spaces and the suggestion that employees may not have cars.
 - Sought clarification on the definition of "residential only" and whether it applied to commercially licensed vehicles.
 - Inquired about the possibility of management or owners using residential parking spaces versus employees.

Beaudette – Emphasized the decision to designate the rear parking as residential only to protect neighbors from having trucks parked there.

 - Proposed solutions to address concerns about employee parking, including providing bus passes or bike racks, indicating a willingness to work with the community and the board on this matter.
 - Highlighted that dormitories are typically on sites with commercial use and are often allowed in outlying districts.
 - Defined apartments as having broader residential uses and not necessarily restricted to employee housing.
 - Responded to a query about the primary use of the dwelling, indicating that it could have multiple uses, including potential winter occupancy or affordable rentals for non-employees.

Andy Grennan, Applicant - Described the routine of multiple jobs during the week, with drop-offs and pick-ups on Thursday through Sunday.

 - Addressed the question about the frequency of truck departures and returns on average per day, indicating that it's typically two to three times a day.
 - Clarified that this routine involves three trucks and sometimes two trucks and a van.
 - Confirmed that the current use of the property has followed a similar pattern with two to three trips a day involving trucks and a van.

Beaudette - Confirmed that the proposed building is within the allowed square footage limits based on a percentage of the existing space (25% of 86,87, covering 2100 square feet).

 - Noted that the existing building is one story, and the new building is planned to be 28 feet tall.
 - Responded to concerns about the lack of screening for garage doors facing Surfside Drive, acknowledging the potential visual impact on the residential area.

Botticelli - Expressed concern about the perceived significant change in scale, moving from two garage bays to four and adding four bedrooms, resulting in a substantial increase in density.

 - Acknowledged the need for a solution and expressed a desire for more options to screen the four garage bays.
 - Suggested exploring alternatives to the four-bedroom apartment, considering its size and potential impact on the overall scale of the structure.
 - Recommended designing the apartment in a way that reduces the visual impact, potentially reconsidering the width and height of the structure to avoid it looking like a warehouse in a residential area.

Grennan - Emphasized the positive aspect of offering an apartment and expressed excitement about the potential addition, highlighting the value of having noise ordinance conditions in place.

Brescher - Expressed the opinion that the property meets the prongs of the Powers test, considering it as a non-conforming use that is allowed to expand.

- Mentioned concerns about potential parking challenges and suggested that, practically, there might be people parking on the street.
- Acknowledged the property's compliance with the bylaw definition for parking but expressed skepticism about avoiding street parking.
- Agreed with the assessment that the expansion is reasonable but expressed a limit on further expansion, emphasizing the importance of avoiding a more detrimental impact.

Board discussion ensued during which they spoke of possible conditions.

Motion:

Motion to approve the relief as requested to modify the existing decision of the Board of Appeals for the removal and construction of existing and new buildings as per the attached site plan. Conditions A, B, and C from the previous decision to remain in full force. Additional conditions include: Adherence to the housing management plan, attached to the decision. Hours of operation: Monday through Saturday from 7 to 7, 9 to 5 on Sundays. Replacement of Evergreen screening with hornbeam screening on the site plan. Requirement for screening all trash from the road. Parking details are delineated on the attached plan. Air conditioning with closed windows on the first floor during working hours. Garage bays are to be closed when not in use. Purchase of bus passes for employees.

(made by: Brescher) (seconded by: O'Mara)

Vote:

Carried 5-0// McCarthy, Brescher, O'Mara, Marcklinger, Botticelli (Aye)

2. 14-23 Benjamin and Jacqueline deRuyter

12 Academy Lane

Beaudette

Voting: McCarthy, Brescher, O'Mara, Marcklinger, Botticelli

Alternates: Mondani, Poor

Recused: None

Documentation: File with associated plans, photos, correspondence, and required documentation

Representing: **Richard Beaudette, Esq.,** Beaudette and Swain

Public: Sarah Alger, representative of neighbors Leslie and Wayne Wyrzes
Leslie Wyrzes, 10 Academy Lane

Discussion: **Beaudette** presented an application seeking Special Permit relief pursuant to Zoning Bylaw Section 139-33.A.(1)(b) to change the use of the preexisting nonconforming garage structure to a mixed-use shed and outbuilding/home office. Locus is situated at 12 Academy Lane, shown on Assessor's Map 42.4.3 as Parcel 87. Evidence of owner's title is recorded in Book 1789 and Page 243 with the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).

Board discussion ensued during which they spoke of possible conditions.

Motion:

Motion to approve the proposed change of use, asserting that the change from a garage structure to a shed outbuilding is not substantially more detrimental to the neighborhood. The conditions include:

- **Prohibition of air conditioning units on the east side of the structure.**
- **Specification that the home office is not for human habitation.**
- **Requirement for closed windows when the office is in use.**
- **Abandonment of the curb cut on Academy Lane.**
- **Stipulation that the home office is for the use of the owners and not commercially rented out.**
- **Prohibition of exterior lighting on the east side of the structure.**

(made by: Brescher) (seconded by: Marcklinger)

Vote:

Carried 5-0// McCarthy, Brescher, Marcklinger, O'Mara, Botticelli (Aye)

3. 15-23 Allan and Darina McKelvie

6 Candle House Lane

Williams

Voting: McCarthy, Brescher, O'Mara, Marcklinger, Botticelli

Alternates: Mondani, Poor

Recused: None

Documentation: File with associated plans, photos, correspondence and required documentation

Representing: **Linda Williams**

Public: None

Discussion: **Williams** presented an application seeking re-issuance and modification of a previous grant of relief in the Zoning Board of Appeals Decision in File No. 031-17. Applicants propose to alter and extend the garage structure as previously approved by Special Permit pursuant to Zoning Bylaw Section 139-33A. Additionally, Applicants are seeking clarification to remove the wooden portion of the structure, with the foundation to remain in place, and reconstruct as previously approved. Locus is situated at 6 Candle House Lane and shown on Assessor's Map 55.4.4 as Parcel 52.1. Evidence of owner's title is recorded as Lot 1 in Plan Book 20 and Page 107 with the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).

Motion: **Board** discussion ensued during which they reviewed the prior approved application and conditions A and B. **Motion to approve the requested relief with the conditions within the staff memo, which include:**

- **Demolition of the existing garage.**
- **Proposed reconstruction to be in substantial conformity with plans approved by the Nantucket Historic District Commission (COA numbers HTC 20239 9140 and HDC 20239 9147).**
- **Project completion in accordance with the site plan dated August 16, 2017, prepared by Black Bon Associates.**
- **No further alterations within the 5-foot required side setback without additional relief from the Zoning Board of Appeals.**
- **Adherence to existing conditions from the original decision.**

(made by: Brescher) (seconded by: O'Mara)

Vote: Carried 5-0// McCarthy, Brescher, O'Mara, Marcklinger, Botticelli (Aye)

4. 16-23 Lee and Priscilla Saperstein 20 New Street Williams

Voting: Brescher, O'Mara, Marcklinger, Botticelli, Mondani

Brescher disclosed that he filled out a conflict-of-interest form because the Saperstein's, who are his wife's clients, asked for advice regarding whether the application needed to go before the Board of Appeals. Despite this connection, Brescher believed there was no conflict of interest and nevertheless submitted a disclosure for the appearance of a conflict-of-interest. He expressed a willingness to recuse himself if anyone on the board or in the audience disagreed with his assessment.

Alternates: Poor

Recused: McCarthy

Documentation: File with associated plans, photos, correspondence and required documentation

Representing: **Linda Williams**

Public: None

Discussion: **Williams** presented an application requesting a Modification of the previously granted Special Permit in File No. 014-05, which was further modified in File No. 086-06, File No. 043-08, and File No. 013-09. Specifically, Applicants are seeking to eliminate two (2) of the conditions in order to convert the studio structure to a secondary dwelling. Additionally, to the extent necessary, Applicants are seeking Special Permit relief pursuant to Zoning Bylaw Section 139-18, for a waiver of the onsite parking requirements. Locus is situated at 20 New Street, shown on Assessor's Map 55, Parcel 337. Evidence of owners' title is recorded in Book 943 and Page 342 with the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).

Motion: **Motion to approve as submitted, including the existing conditions with the exception of D and F** (made by: Marcklinger) (seconded by: O'Mara)

Vote: Carried 5-0// Brescher, Marcklinger, O'Mara, Botticelli, Mondani (Aye)

5. 17-23 C. Gail Greenwald and Roy F. Greenwald, Trustees of the Roy F. Greenwald Revocable Trust – 1994 and of the C. Gail Greenwald Revocable Trust - 1994 6&6A Washington Avenue Cohen

Applicants are seeking a Variance pursuant to Zoning Bylaw Section 139-32, to exceed the allowable maximum ground cover in order to merge two lots. Locus is situated at 6 + 6A Washington Avenue and shown on Assessor's Map 60.2.4 as Parcels 66 + 66.1. and shown as Lots 896 + 897 on Land Court Plan 3092-120. Evidence of owner's title is registered on Certificate Title No. 27237 with the Nantucket County District of the Land Court. The site is zoned Village-Residential (VR).

Voting: McCarthy, Brescher, O'Mara, Marcklinger, Botticelli

Alternates: Mondani, Poor

Recused: None

Documentation: File with associated plans, photos, correspondence and required documentation

Representing: **Steven Cohen** presented an application seeking a Variance pursuant to Zoning Bylaw Section 139-32, to exceed the allowable maximum ground cover in order to merge two lots. Locus is situated at 6 + 6A

Washington Avenue and shown on Assessor's Map 60.2.4 as Parcels 66 + 66.1. and shown as Lots 896 + 897 on Land Court Plan 3092-120. Evidence of owner's title is registered on Certificate Title No. 27237 with the Nantucket County District of the Land Court. The site is zoned Village-Residential (VR).

Cohen mentioned that in order to get to a Board of Health solution, it would be better if it were just one lot as opposed to two.

Public:

Don Bracken, Bracken Engineering, provided the following history and insight:

- Board of Health approved a gray water system using the existing septic system when it was initially considered one lot.
- During the 4181L process, the property was unintentionally made non-compliant from a Title 5 standpoint.
- Lack of documentation for a shared system or easement caused compliance issues, despite being under the same ownership.
- The gray water system failed, prompting the need for a solution.
- The speaker realized they had to seek a variance from the Board of Health for a shared system or an easement.
- Due to limited space and a well in the neighborhood, having separate systems was impractical.
- A plan was developed, including reducing the cottage's bedrooms and implementing an advanced IA system for shared use.
- The shared system, under single ownership, was seen as environmentally preferable and more manageable.
- The goal was to address compliance issues created inadvertently during the 4181L process and improve the overall situation.

Discussion:

Marcklinger – stated that the Board of Health doesn't require an easement if both lots have the same owner.

- Suggested that the process could proceed independently without permission but acknowledged potential challenges with zoning ground cover variance.

Motion:

Motion to grant the requested variance relief at 2:43:08 due to the unique shape, structures on the lot, and soil conditions, as discussed. It is acknowledged that literal enforcement of the provisions of the chapter would cause substantial hardship. This relief can be granted without substantial detriment to the public good or without nullifying or deviating from the intent of the bylaw. It is proposed that this relief is granted with the condition that there shall be no further subdivision of this lot without additional relief from the Zoning Board of Appeals. (made by: Brescher) (seconded by: Marcklinger)

Vote:

Carried 5-0// McCarthy, Brescher, Marcklinger, O'Mara, Botticelli (Aye)

IV. OTHER (VOTES MAY BE TAKEN)

1. 2024 Zoning Board of Appeals Meeting Schedule

Discussion:

- The suggestion was made to move the October meeting to the 17th next year, aligning with the proposed change to the filing date, which is September 15th.
- The December meeting's filing date, originally set for November 11th (Veterans Day), was discussed. It was proposed to move it to November 4th, allowing for the required two weeks of legal notice and accommodating the preference for Monday meetings.

V. ADJOURNMENT (VOTES WILL BE TAKEN)

Motion:

Motion to adjourn. (made by: Brescher) (seconded by: O'Mara)

Vote:

Carried 5-0// McCarthy, Brescher, Marcklinger, O'Mara, Botticelli (Aye)