



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, December 14, 2023

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

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

I. CALL TO ORDER:

Called to order at 1:06 pm and Announcements made by Ms. McCarthy

Staff in attendance: Nicky Sheriff, Administrative Specialist; William Saad, Land Use Specialist

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

Remote attendance: None

Absent: Botticelli

Late Arrivals: -

Early Departures: -

Town Counsel: -

II. APPROVAL OF AGENDA

Motion: Motion to Approve the agenda, as drafted. (made by: O'Mara) (seconded by: Brescher)

Vote: Carried unanimously

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

03-22 9 Thirty Acres LLC

9 Thirty Acres Lane

Alger

The Applicant is required to review with the Board all conditions set forth in the Decision in Zoning Board of Appeals File No. 03-22 at a Public Hearing pursuant to condition 19 of the Employee Dormitory Management Plan attached to the Decision as "Exhibit I". This review may result in additional conditions and or requirements being imposed by the Board. Locus is situated at 9 Thirty Acres Lane, shown on Assessor's Map 67, Parcel 115.7, and as Lot 3 upon Plan File 48-G. Evidence of owner's title is recorded in Book 1894, Page 54 on file at the Nantucket Country Registry of Deeds. The site is zoned Commercial Neighborhood (CN).

Voting:	McCarthy, Allen, Brescher, Marcklinger, O'Mara
Alternates:	Mondani, Poor
Recused:	None
Documentation:	File with associated plans, photos, correspondence and required documentation
Representing:	Sarah Alger / Jaime Strobino, Partner with Brotherhood of Thieves
Public:	-
Discussion: (13:10)	Strobino - Provided update to the Board on current conditions of the employee dormitory. Santamaria - Affirmed the accuracy of Mr. Strobino's statements regarding the on-site meeting to discuss property issues. - Expressed appreciation for the efforts and progress in addressing the issues at the property. - Acknowledged the planned installation of a fence and expressed gratitude for its implementation. - Noted the high usage of bike racks and commended the innovative use of hoverboards for transportation. - Appreciated the collaborative efforts and positive direction towards a compromise. - Requested the completion of the pending task, which is the relocation of the trash can to address concerns about odor and proximity.

	- Highlighted the impact of the trash bin's current location, especially in the summer. - Conveyed gratitude for the progress made in addressing the community's concerns. Strobino - Confirmed that the recycle bin (trash can) will be moved to the opposite side and not near any property. Allen (16:22) - Critiqued the current recycling system, emphasizing the confusion for those unfamiliar with recycling concepts. - Suggested labeling the recycling bin explicitly as "recycling only" for clarity. - Proposed a larger recycling bin, as the existing one is insufficient and results in issues like an open lid when items are forced in. - Highlighted problems with the current setup, including the risk of crows and seagulls spreading litter due to the inadequate size and security of the recycling bin. - Asserted the need for a more secure lid, even if the bin is relocated near a dumpster, as the current arrangement is deemed ineffective. - Noted concerns about the material and placement of trash bins impacting the likelihood of rats getting into them. - Suggested that a trash bin made of pine and sitting on the ground is more susceptible to rat access. - Emphasized the effectiveness of containers on casters, particularly those made of metal, in preventing rats from gaining access. - Encouraged careful consideration of the material and design of trash bins to address potential rat-related issues effectively. Board discussion ensued during which they: - Proposed proactive measures to address potential issues with garbage handling at the beginning of the season. - Suggested issuing photographs showcasing how the garbage is managed to abutters, ensuring transparency and early awareness. - Emphasized the importance of informing abutters promptly rather than waiting for complaints to arise. - Recommended a deadline of May 1st for providing documentation on garbage management to avoid delays in addressing any concerns. - Speculated that handling this issue administratively may be sufficient, with no need to return to the board unless problems persist.
Motion:	Motion to conclude the review with the condition that the applicant submits a report to staff with photos of the trash, fence, and parking, by May 1, 2024, and setting another meeting to review the status in November 2024. (made by: Brescher) (seconded by: Allen) (26:19)
Vote:	Carried 5-0 // McCarthy, Allen, Brescher, Marcklinger, O'Mara

09-22 Harris on Weweeder, LLC**50 Weweeder Avenue****Brescher*****Continued to January 11, 2024***

The 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).

Voting:	McCarthy, Allen, O'Mara, Mondani, Poor
Alternates:	-
Recused:	None
Documentation:	File with associated plans, photos, correspondence and required documentation
Representing:	-
Public:	-
Discussion:	-
Motion:	Motion to continue to January 11, 2024. (made by: Allen) (seconded by: Mondani) (32:56)
Vote:	Carried 5-0 // McCarthy, Allen, O'Mara, Mondani, Poor

20-22 Steven L. Cohen & Christopher P. Choma, Trs. 29 Monomoy Rd Nominee Trust,**Cohen*****Continued to January 11, 2024***

The 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).

Voting:	McCarthy, Allen, Brescher, Mondani, O'Mara
Alternates:	Poor
Public Comment:	Arthur Reade , Represents Joanne Bennet - Abutter - Shared the client's perspective on the ongoing case, having followed it since its original placement on the agenda in June. - Noted the inconvenience faced by the clients due to the continuous postponements, especially without apparent explanations. - Expressed agreement with the suggestion for a new notification and notice to abutters. - Described the irregularity of the case being continued multiple times without clear presentations or explanations to the board. - Acknowledged the willingness to allow the case to be continued today but supported the idea of imposing a shorter timeline and a more proactive approach from the applicant moving forward.
Discussion: (27:34)	Saad - Noted that the applicants had requested a continuance, and an extension until the end of January 2024 was granted for the action deadline. - Expressed the original intention to have the applicants present at the current meeting to discuss matters with the board. - Mentioned the representative's communication about being unable to attend the current meeting. - Highlighted the board's usual practice of granting continuances upon request.

	- Opened the possibility of the board being more assertive about attendance in January, based on their preference. McCarthy - Advocated for revisiting the discussed matters in January. - Acknowledged the historical practice of granting continuances but pointed out the extended duration of these cases. - Expressed agreement with the view that these cases have been lingering for an extended period and occupying agenda space. - Proposed a reassessment in January to address the extended timeline and potential resolutions for the pending matters. Saad - Referenced past board discussions on the matter from a few years ago, as found in the minutes. - Noted the original plan to require re-noticing abutters if the applicants sought a decision from the board. - Highlighted the prolonged period of being on hold, deeming it unfair without adequate progress or resolution. - Indicated a commitment to fairness in the process and a consideration for the rights of all involved parties.
Motion:	Motion to continue. (made by: Brescher) (seconded by: Allen)
Vote:	Carried 5-0 // McCarthy, Allen, Brescher, Mondani, O'Mara

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

18-23 7 I Street, LLC

7 I Street

Thornewill

The Applicant is seeking a Modification to the previously issued Special Permit in ZBA File No. 077-12. Pursuant to Nantucket Zoning Bylaw Section 139-33.A.(1)(a) to change the use of the preexisting nonconforming garage to a secondary dwelling. Locus is situated at 7 I Street, shown on Assessor's Map 59.4, Parcel 74, and shown as Lots 46, 57, and 68 on Land Court Plan 3092-S. Evidence of owner's title is registered on Certificate Title No. 28515 with the Nantucket County District of the Land Court. The site is zoned Village-Residential (VR).

Voting:	McCarthy, O'Mara, Marcklinger, Poor
Alternates:	Mondani
Recused:	Brescher
Documentation:	File with associated plans, photos, correspondence and required documentation
Representing:	Luke Thornewill – Agent, Maureen Dunphy - Homeowner
Public:	Maureen Dunphy , Homeowner -
Discussion: (37:44)	The Board - Pointed out the perception that the structure is being used as a bedroom and for overnight stays during the summer, constituting human habitation. - Noted the contradiction with the permit, which specifies that the structure is not intended for human habitation. - Recognized the need for clarification on the actual usage of the space and suggested a potential need for forgiveness or understanding based on the perceived discrepancy. Poor - Provided clarification on the bedroom cap, stating that the Board of Health typically considers any structure with a full bath as having one bedroom. - Explained that the determination is based on the presence of a full bathroom rather than the overall space. - Emphasized the importance of septic capacity in relation to the number of bedrooms when considering the Board of Health's perspective on such structures.

	Allen - Questioned if there are two storage trailers on the property. Dunphy - Confirmed the presence of trailers on the property. - Identified the purpose of each trailer, including one for the boat, and one open trailer for transporting items between home and the property. Marcklinger - Questioned the use of the shed and if there is an outdoor shower. Dunphy - Confirmed that the shed is for storage and that there is no plumbing in the shed. McCarthy - If supportive of the applicant's request, a finding could be made that the proposed change from a garage studio to a secondary dwelling aligns with the general purpose and intent of the bylaw. - Emphasized that the non-conforming setback distances are not increasing and would not be substantially more detrimental to the neighborhood than the existing non-conformity. - Suggested potential conditions, including no further expansion without additional relief from the ZBA. Poor - Proposed a condition that the proposed changes to the structure should conform to the certificate of appropriateness, specifying the relevant number. Allen - Stated a condition regarding the shed, clarifying that it should have no plumbing and no outdoor shower, even if shown on the plan.
Motion:	Motion to approve, with conditions. (made by: Poor) (seconded by: O'Mara) (53:20)
Vote:	Carried 4-1 // McCarthy, Allen, O'Mara, Poor // Marcklinger (Nay)

19-23 2 Easton Street LLC & Nantucket Boat House LLC**2 & 6 Easton Street****Hunton**

The Applicants are seeking Special Permit Relief pursuant to Nantucket Zoning Bylaw Sections 139-33A(1), 139- 30, and 139-22(D) to reconfigure a preexisting nonconforming residential pier. Locus is situated at 2 & 6 Easton Street, shown on Assessor's Map 42.1.4, Parcels 8 & 9, and as Lot 2, Plan Book 18 Page 160 and Lot 1, Plan Book 18 Page 160. Evidence of owner's title is recorded in Book 1398, Page 329, and Book 1518, Page 251 on file at the Nantucket Country Registry of Deeds. The site is zoned Residential 1 (R-1).

Voting:	McCarthy, Brescher, O'Mara, Marcklinger
Alternates:	Mondani, Poor
Recused:	None
Documentation:	File with associated plans, photos, correspondence and required documentation
Representing:	Cole Bateman/Michele Hunton
Public:	
Discussion: (57:42)	Bateman - Affirmed that Coast Guard was notified during the abutter process for the licenses or permits. - Mentioned the need for two additional permits: one from the Army Corps and a minor modification to the Chapter 91 license. - Clarified that the Governor has already signed the license, and the request is for a minor modification, making it a simpler administrative process. Saad - Noted that there was no negative correspondence received from anyone, including abutters. - Clarified that there were no responses from the Natural Resources department. - Confirmed the absence of letters or communications from abutters expressing concerns. - Highlighted the multiple notifications provided to the Coast Guard regarding the matter.

	Mondani - Questioned the construction methods for installing the new pier. Bateman - Confirmed the existence of an existing bulkhead. - Clarified that the proposed action involves maintaining the existing bulkhead by installing an additional layer seaward of it. - Indicated that the purpose includes raising the bulkhead by 1 foot for considerations related to coastal resiliency. - Mentioned that despite the modifications, the area would still be accessible from the barge used for construction. - Clarified that the proposed modification does not extend in plan view. - Explained that while the appearance of the ramp may change due to raising, the flow remains at the same height. - Indicated that the purpose of the change is to provide safe access to the flow and maintain consistency with the Chapter 91 license. - Highlighted that the modification involves installing a 30-foot gateway, consistent with the existing footprint of 24 feet. McCarthy - Staff recommended approval based on specific findings. - Findings include that proposed alterations are not substantially more detrimental than the existing non-conforming structure and do not result in a net increase of the structure's existing footprint. - Emphasized that the alterations are not more detrimental to the marine environment than the existing structure. - Suggested condition for consideration: The project should be completed in accordance with the plan titled "Plan showing proposed dock improvements prepared for 2 Easton St. LLC," dated November 13th, 2023, and prepared by Coastal Engineering Co. - Reiterates Finding #2 regarding the lack of a net increase in the structure's existing footprint. - Clarification sought on who will be writing the decision, potentially Saad or the applicant's attorney. - Expresses the need for assurance that the decision will encompass all technical details and reference the decisions made by other boards and agencies. - Stresses the importance of the decision referencing the technical aspects that have been thoroughly reviewed by other relevant entities. - Indicates a desire for the decision to align with and acknowledge the comprehensive reviews carried out by other boards and agencies.
Motion:	Motion to approve the relief based off of findings and conditions. (made by: O'Mara) (seconded by: Allen) (1:08:00)
Vote:	Carried 5-0 // McCarthy, Allen, Brescher, O'Mara, Marcklinger

20-23 5 Amelia Drive, LLC**5 Amelia Drive****Reade**

The Applicant is seeking a Modification to the previously issued Variance in ZBA File No. 025-06. Pursuant to Nantucket Zoning Bylaw Section 139-32 to allow the construction of a permanent roof over the patio area. Locus is situated at 5 Amelia Drive, shown on Assessor's Map 67, Parcel 435, and shown as Lot 24 upon Plan File 30-D. Evidence of owner's title is recorded in Book 1906, Page 49 on file at the Nantucket Country Registry of Deeds. The site is zoned Commercial Neighborhood (CN).

Voting:	McCarthy, Allen, Brescher, O'Mara, Marcklinger
Alternates:	Mondani, Poor
Recused:	None
Documentation:	File with associated plans, photos, correspondence and required documentation

Representing:	Arthur Reade / Jenn King
Public:	-
Discussion: (1:12:16)	McCarthy - Sought clarification on whether the proposed new structure would maintain proximity to the front yard lot line, staying approximately two feet away. - Inquired about the intended function of the structure, asking about the number of seats and whether it was planned as a restaurant or if it offered takeout food. Reade - Confirmed that the lot line was to remain in the same location and would not be moving. King - Stated that it was not going to be a restaurant of any form. What was allowed was essentially take-out and vending machines that were stocked by makers and the people using the kitchens. - Mentioned that a few tables would be allowed for meetings, where makers could sit down and individuals who purchased items from a food locker could eat. - Clarified that there was no table service planned. Allen - Suggested removing the awning and replacing it with a permanent roof. McCarthy - Addressed the previous structure, the awning was in place, extending over the concrete slab that nearly reached the edge of the sidewalk. - Wondered why the outdoor area, now devoid of the awning and permanent structures, couldn't have been made to conform with the front yard setback. The question revolved around the need to maintain the setback intrusion when the metal structures were no longer present. - Expressed confusion about the necessity to retain the setback intrusion on the flat slab surface after the removal of the awning and permanent structures. - Suggested an alternative approach where the outdoor space conforms to the front yard setback, allowing for benches or other amenities for people to enjoy their food locker lunches. Reade - Explained that it gave them a lot less room to operate, especially if it was cut back. - Emphasized the idea of having something over the heads of the people with the awning and now the roof. - Pointed out that the unpredictable and sometimes unpleasant weather necessitated having something over the area to enable its use. - Noted their entitlement to continue using the awning but expressed agreement with the suggestion that the roof is a better solution. McCarthy - Discussed the argument made in the original decision for having the awning, citing the need for parking spaces and the absence of an alternative space for people to sit. - Noted the potential change in how the building is used, focusing on creating a space for people to sit, talk, and meet, rather than table service. - Raised the possibility of utilizing the back of the building for this purpose, considering the potential change in the parking calculation with fewer people coming and going. - Questioned the necessity of maintaining the porch area and permanent structure in the front yard setback, suggesting that the original hardship might be minimized or lessened. Reade: - Mentioned the Planning Board review for the entire project, highlighting the need for all available parking spaces. - Asserted the limitations on adding the proposed structure to any other part of the building, explaining that it wouldn't work well elsewhere.

	- Argued that the addition was an improvement on the existing situation, with the existing awning being entitled to remain. - Referenced the Planning Board's favorable consideration of the project but acknowledged the need for a variance amendment, leading to the return to the current board. McCarthy - Clarified that the decision stated the awning should be located no closer than two feet from the front yard lot line or along Amelia Drive. - Pointed out the condition in the decision that required further relief from the board if the applicant proposed converting the cloth awning and framework into a more permanent overhanging structure. - Argued that the change from a seasonal awning to a permanent structure warranted reconsideration of the two-foot intrusion requirement and suggested that further relief might be necessary. Allen - Inquired about the depth of the proposed permanent covered porch from the edge of the road to the front door. - Expressing a preference for it to become a permanent architectural feature and covered area while also agreeing that it should comply with setbacks. - Requested information on the difference in footage if the porch were pulled back to conform to the setback. Reade - Examined the plan and estimated that the proposed depth, reduced by 8 feet, would be approximately 18 to 20 feet instead of the current 26 to 28 feet. Allen - Expressed the opinion that it's reasonable to ask the applicant to adhere to the setback with the new permanent structure. - Pointed out that 18 feet should be sufficient for meetings and other activities involving people inside the building. - Stated that conforming to the front yard setback with the permanent structure wouldn't impact parking or other aspects on other sides of the building. McCarthy - Emphasized the perspective that if there's an opportunity to alleviate zoning intrusion or nonconformity, it's the board's responsibility to consider it. - Acknowledged that the proposal for a permanent structure changes the context from the original awning. - Expressed support for the idea of conforming to the setback, considering it a better option for the neighborhood, particularly given the heavy traffic and burden on Amelia Drive during the summer. Allen - Commented on the design perspective, stating that it would still look great as a permanent structure with a 5-foot setback. - Expressed confidence in the ability of the designer to create an aesthetically pleasing structure within the specified setback. - Emphasized that 18 feet is a substantial amount of space, especially when compared to a smaller setback like three feet. Marcklinger - Considered the trade-off between what the applicant is losing in terms of space and what they are gaining with a permanent structure. Mondani - Although not voting on this item, stated that he would be in support of not granting the change as is. Reade
--	---

	- Proposed the idea of requesting a continuance to January 11, 2024, to allow the client time to reassess and decide how to proceed. - Acknowledged the impact of the current discussion on the previously obtained Planning Board approval.
Motion:	Motion to grant continuance. (made by: Allen) (seconded by: Marcklinger) (1:30:59)
Vote:	Carried 5-0 // McCarthy, Brescher, Allen, O'Mara, Marcklinger

V. OTHER (VOTES MAY BE TAKEN)

051-03 Paul and Louise Laudano 10 Fox Grape Lane/Rugged Scott a/k/a Beach Plum 40B

The Applicant seeks a determination that proposed changes to the architectural plans approved with the Comprehensive Permit, as amended, may be considered insubstantial pursuant to 760 CMR 56.05 (11)(a)(b), and as such, may be authorized by the Zoning Board of Appeals. The proposed changes consist of the installation of an inground swimming pool upon Market Rate Lot 6, also known as 10 Fox Grape Lane of the 40B development known as Beach Plum Village.

Voting:	McCarthy, Allen, O'Mara, Marcklinger, Mondani
Alternates:	Poor
Recused:	Brescher
Documentation:	File with associated plans, photos, correspondence and required documentation
Representing:	Paul Laudano
Public:	-
Discussion: (1:34:55)	Saad - Explained that the current situation involves a change to the overall site plan. - Referred to the Board's history of ruling on various changes within the context of a 40B development. - Emphasized that any change to a lot within the 40B structure will trigger a determination process. Mondani - Acknowledged that the change is substantial on an existential level. - Highlighted the approval of other similar changes within the development. McCarthy - Indicated that if deemed insubstantial, it doesn't involve a public hearing. - Mentioned HDC approval and past similar findings for pools and spas. - Supported the applicant's request, citing six previous instances of similar decisions. - Proposed a finding that the proposal, with the condition of compliance with setbacks, may be considered an insubstantial modification.
Motion:	Rollcall motion to determine if the request is insubstantial. (1:43:42)
Vote:	Carried 5-0 // McCarthy, Allen, O'Mara, Marcklinger, Mondani
Motion:	Rollcall motion to authorize the Chair to sign a letter memorializing the board's decision that the request and application for 10 Fox Gray Plane is an insubstantial modification to the comp permit and the plan. (1:44:19)
Vote:	Carried 5-0 // Allen, O'Mara, Marcklinger, Mondani, Poor

2024 Zoning Board of Appeals Meeting Schedule

- Discussion: McCarthy**
- Encouraged members to communicate any travel-related impacts on attendance.
 - Mentioned that as of now, there are no conflicts for herself, Joe, Mark, and Elisa.
 - Assumed that others, who did not respond, likely did not have conflicts with the existing calendar.
 - Clarified that the meeting schedule does not conflict with Veterans Day or Columbus Day.
 - Affirmed the assumption of continuing with hybrid meetings.

Motion:	Motion to approve the 2024 Zoning Board of Appeals Meeting Schedule. (made by: Allen) (seconded by: Marcklinger) (1:47:24)
Vote:	Carried 5-0 // McCarthy, Allen, Brescher, O'Mara, Marcklinger

VI. ADJOURNMENT (VOTES WILL BE TAKEN)

Motion: **Motion to adjourn. (1:49:13)**

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