



Planning and Land Use Services

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

Date: 01/08/2024
To: Zoning Board of Appeals
From: Billy Saad
Land Use Specialist
RE: Staff Report for 01-11-24 ZBA Meeting

III. APPROVAL OF THE MINUTES:

- Pgs. 5-19
- NOVEMBER 10, 2023
 - DECEMBER 8, 2023

Staff reviewed the minutes and recommends approval.

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

09-22 Harris on Weweeder, LLC

50 Weweeder Avenue

Brescher

Action Deadline: January 31, 2024

Sitting: SM, EA, MJO, GT, MP

REQUEST FOR WITHDRAWAL

The Board will need to determine if the withdrawal request is with or without prejudice.

20-22 Steven L. Cohen & Christopher P. Choma, Trs. 29 Monomoy Rd Nominee Trust,

Cohen

Action Deadline: January 31, 2024

Sitting: SM, LB, EA, JB, Jim M

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).

FROM THE 1/12/23 STAFF REPORT:

The applicant provided a detailed description of the proposal, which is included in your packet. The request is to grant a variance to allow the ground cover of the property to TEMPORARILY increase above 7% pending the finalization of a land conveyance from the Town of Nantucket.

This is a unique situation given the layout of the lots abutting Orleans Road, see "Roadway Acquisition Plan"

on **Page 32 of the Packet**. The acquisition of Lot “F” has been stalled at Land Court and therefore has not been legally acquired by the owner of 14 Brewster Road. Additionally, the owner of 14 Brewster Road would be required to obtain a written agreement with the Board of Selectman to finalize any such sale. While the acquisition of Lot “F” may be forthcoming to the applicant, the request for Variance is premature.

The finding the Board will need to make to approve the variance is that “owing to circumstances related to soil conditions, shape or topography of such land or structures and especially affecting 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 a 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 does not recommend approval of the request at this time.

UPDATE:

The Applicant is providing an update to the Board on the status of the application that has been continued since the January 12, 2023, meeting. Staff recommends this application be withdrawn without prejudice until more information is available.

Pgs.
46-77

20-23 5 Amelia Drive, LLC

5 Amelia Drive

Readers

Action Deadline: February 21, 2024

Sitting: SM, JB, EA, MJO, Joe M

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).

FROM THE 12/14/23 STAFF REPORT:

Applicant is seeking approval to modify subparagraph 5.c of the Decision in ZBA File No. 025-06. This subparagraph currently permits the placement of a seasonal awning over the outdoor dining area, allowing it as close as two (2) feet from the front yard lot line. Subparagraph 5.c also stipulates that if the applicant wishes to convert the cloth awning and framework into a more permanent overhang structure, such as a porch or deck, further relief from the Board is required.

The Variance was originally granted to Cinco restaurant, the former operator of the site. However, after this decision, the Planning Board approved an amendment to the MCD special permit, allowing the conversion of use to multiple commercial kitchens and a take-out station. Through their deliberations, the Planning Board was supportive of the applicant's request, however, the approval to convert the cloth awning was outside of their scope.

No abutters concerns were received. Staff recommends approval.

If the Board is inclined to approve this application, staff recommends the following finding and conditions be made:

Finding:

- 1) That owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting 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.

Conditions:

- 1) There shall be no further alterations of the structure within the ten-foot required front yard setback area without further relief from the ZBA.
- 2) That all other conditions of the original decision remain in full force and effect.

UPDATE:

No new materials have been provided.

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

Pgs.
80-112

21-23 Carl and Sharon Nielsen

2 Cabot Lane

Cohen

Action Deadline: April 10, 2024

The Applicants are seeking a Special Permit pursuant to Zoning Bylaw Section 139-33 A, to alter the preexisting, nonconforming cottage structure, which is nonconforming as to side and rear yard setbacks. Additionally, the Applicants seek zoning relief to allow for the house to be temporarily lifted from its foundation to allow for construction of the basement. Locus is situated at 2 Cabot Lane, shown on Assessor's Map 30 as Parcel 254 and upon Land Court Plan No 2023-38, Unit 2. Evidence of owner's title is recorded in Book 1945 and Page 40 with the Nantucket County Registry of Deeds. The site is zoned Residential-1 (R-1).

The Locus is a condominium unit numbered 2A Cabot Lane (a portion of 2 Cabot Lane) and contains 7,338 SF in the R-1 zoning district. The cottage structure is pre-existing nonconforming with respect to side and rear yard setbacks. The lot is otherwise dimensionally compliant.

The project consists of an addition resulting in a vertical expansion within the southwesterly side yard setback, and northwesterly rear yard setback. Specifically, a 2nd floor addition with dormers and the construction of a basement, which will require the house to be temporarily lifted. HDC approval No. HDC2023-08-8902 is on *Pages 92-103 of the Packet*.

A detailed narrative of the proposal is included in the packet. Staff recommends that the Board discuss things such as mitigation measures for excavation, access to the site, and where the structure will be proposed to be stored during the construction of the basement. No letters were received.

Relief is requested pursuant to **Section 139-33.A(1)(a)** which reads:

Preexisting, nonconforming structures or uses may be extended, altered, or changed, provided that:
(a) The special permit granting authority finds that such extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure and/or use to the neighborhood.
[...]

If the Board is inclined to approve the application, staff recommends the following findings and conditions:

Findings:

- 1) That granting the proposed relief pursuant to By-law Section 139-33.A(1)(a) is consistent with the finding that the proposed renovations are not substantially more detrimental than the pre-existing nonconforming dwelling to the neighborhood, and are within the spirit and intent of the Bylaw.

Conditions

- 1) No exterior construction shall be allowed between Memorial Day and Labor Day of any given year for the work contemplated herein;
- 2) The proposed alterations shall be in substantial compliance with the Proposed Conditions shown upon "Exhibit A";
- 3) The proposed alterations shall be in substantial conformity with the plans approved in connection with Certificate of Appropriateness No. HDC-2023-08-8902, as the same may be amended from time to time; and

Pgs.
114-137

23-23 William M. Murphy, Trustee of 89 Easton Street Nominee Trust 89 Easton Street Santos

Action Deadline: April 10, 2024

The Applicant is seeking a Special Permit pursuant to Zoning Bylaw Section 139-33 A, to alter the preexisting, nonconforming structure by relocation upon the lot. Locus is situated at 89 Easton Street, shown on Assessor's Map 42.4.4 as Parcel 21. Evidence of owner's title is recorded in Book 1944 and Page 118 with the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).

The Locus contains 6,292 SF in ROH and is pre-existing nonconforming with respect to height, side, and rear yard setbacks. The lot is otherwise dimensionally compliant.

The proposal consists of relocating the dwelling by thirty inches (30") to the west and twenty-four inches (24") to the north. This adjustment would decrease the setback intrusion from North Avenue from the current 0.1' to 2.6' and decrease the setback intrusion from Easton Street from 2.4' to 3.8'. It's important to note that, in accordance with Section 139-16C.3 of the Bylaw, a zero-foot (0') front yard setback has been designated along Cliff Road. The preexisting nonconforming ridge height stands at 37.5', exceeding the maximum allowance of 30' as stipulated in Section 139-17.A of the Bylaw. The HDC approved the project as a "Staff Approval". The Applicant has submitted their staff approval application, *Pages 118-129 of the Packet*. Additionally, the move would satisfy the minimum setback requirement for fire-rated construction code compliance. Existing conditions are shown on *Page 114 of the Packet* and proposed conditions are shown on *Page 115 of the Packet*.

Relief is requested pursuant to Section 139-33.A(1)(a) which reads:

Preexisting, nonconforming structures or uses may be extended, altered, or changed, provided that:

*(a) The special permit granting authority finds that such extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure and/or use to the neighborhood.
[...]*

The proposed move alleviates the setback encroachments, and the preexisting nonconforming height of the structure will not be made more nonconforming. Staff recommends approval with the following findings and conditions:

Findings:

- 1) That granting the proposed relief pursuant to By-law Section 139-33.A(1)(a) is consistent with the finding that the proposed renovations are not substantially more detrimental than the pre-existing nonconforming dwelling to the neighborhood, and are within the spirit and intent of the Bylaw.

Conditions

- 1) No exterior construction shall be allowed between Memorial Day and Labor Day of any given year for the work contemplated herein;
- 2) The proposed alterations shall be in substantial compliance with the Proposed Conditions shown upon “Exhibit A”;
- 3) The proposed alterations shall be in substantial conformity with the plans approved in connection with Certificate of Appropriateness No. HDC-2023-09-9115, as the same may be amended from time to time; and
- 4) The issuance of a Certificate of Occupancy for the project shall be contingent upon surveyor certification that the height of the altered structure is no higher than the existing height of 37.5 feet above average mean grade.

VI. OTHER (VOTES MAY BE TAKEN)

VII. ADJOURNMENT (VOTE WILL BE TAKEN)
