



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, February 8, 2024

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 1:08pm and Announcements made by Ms. McCarthy

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

II. APPROVAL OF AGENDA

Motion: Motion to Approve the agenda, as drafted. (made by: Brescher) (seconded by: Allen)
Vote: Carried unanimously

III. APPROVAL OF MINUTES

Motion: Motion to Approve the minutes of November 9, 2023, December 14, 2023, and January 11, 2024, as drafted. (made by: Allen) (seconded by: Brescher)
Vote: Carried unanimously

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

21-23 Carl and Sharon Nielsen

2 Cabot Lane

Cohen

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).

Voting:	Brescher, Allen, Marcklinger, Botticelli, Mondani
Alternates:	O'Mara
Recused:	McCarthy
Documentation:	File with associated plans, photos, correspondence and required documentation
Representing:	Steven Cohen
Public:	-
Discussion: (00:09:50)	Marcklinger - Mentioned window wells being positioned very close to the lot line, questioning the feasibility of construction without over-digging or impacting the abutter's property.

	Cohen - Stated that it is entirely possible, through engineering and shoring, to build from lot line to lot line without disturbing neighboring properties by implementing the appropriate protective measures. Marcklinger - Raised a question about the original site having three dwellings as shown in the 1988 site plans, inquiring how this was possible when tertiary (third) dwellings were not allowed until 2016. Cohen - Speculated that the presence of three dwellings in 1988 might be due to a pre-existing non-conforming status or possibly an error. - Concluded that, despite uncertainties about its compliance in 1988, the site is compliant now. - Noted that only about 20 feet of ground cover allocated to the client remains unused, indicating the building could not expand significantly. However, there might be additional capacity for expansion on other parts of the property. - Mentioned that the property in front of this one is surrounded by a sheet wall. Brescher - Recommended getting the property surveyed and staked before any digging starts due to the very tight property lines. Allen - Questioned who will monitor the construction methodology and ensure that the steel plates are installed correctly and at the appropriate times by Barrett. Cohen - Discussed who will confirm on behalf of the Town the proper installation of shoring, suggesting the commission could make it a requirement, not typically included in standard inspections. - Mentioned the possibility of not issuing a building permit or delaying commencement of work until the shoring installation is inspected by an appropriate town representative. - Suggested that the Planning Board usually requires a pre-site meeting with the builder and staff to confirm protocols not required by building permit inspections. - Clarified that while it's not a mandatory step, the commission has the authority to make it one. - Proposed requiring confirmation of the shoring and lot line protection plan with the building department before and after installation, noting this practice is not unusual for major commercial developments (MCDs) and similar projects. Saad - Mentioned a typical condition for excavating in tight spaces involves the contractor providing their contact number to the planning department to keep on file, allowing for the sharing of this information with appropriate parties if any issues arise. Allen - Suggested it would be beneficial to have photos documenting the completion and proper viewing of construction work, ensuring it has been done correctly. O'Mara - Stated that under current bylaws, if an applicant provides the building inspector with a surveyed copy of the foundation (in this case, the new foundation) that adheres to submitted plans and is within setbacks, but later a setback issue arises upon
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	completion, the applicant is eligible to apply for a special permit instead of a variance. - Clarified that if the foundation is accurately assessed ("shot") before construction begins and initially passes inspection, but subsequently, a mistake results in an encroachment issue, the option exists to apply for a special permit instead of a variance to address the discrepancy. Cohen - Agreed with the previously mentioned point and considered it well-made. - Suggested that if the board wishes to prevent future issues, it could implement a condition requiring setback compliance to be verified at the time the foundation is inspected, rather than after the house is constructed. - Endorsed this approach as a prudent measure to ensure compliance and prevent potential problems. Botticelli - Proposed whether it would be beneficial to add dimensions to the two remaining corners of the existing part of the building that is to be lifted and repositioned, noting current dimensions of 2.4 in the Northwest corner and 5.33 in the Southeast corner. Cohen - Acknowledged the points made and agreed that requiring the foundation's dimensions to be calculated both before and after construction to ensure compliance with regulations is a reasonable requirement. - Suggested that the commission could mandate the submission of a surveyed plan detailing any encroachments before issuing the building permit, with a reinspection required before placing the building on the new foundation. This approach addresses the concern raised about ensuring compliance and accuracy in construction positioning.
Motion:	Motion to approve with conditions including: - Requirement for the applicant to put contractor information on file with the planning board. - Addition of the specified dimensions to the site plan. - Mandatory consultation with the building department. - Inclusion of conditions provided in the staff report. (made by: Botticelli) (seconded by: Mondani) (28:52)
Vote:	Carried 4-1 // Brescher, Allen, Botticelli, Mondani (aye) // Marcklinger (nay)

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

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).

Voting:	McCarthy, Allen, Brescher, Marcklinger, O'Mara
Alternates:	Botticelli, Mondani
Recused:	None
Documentation:	File with associated plans, photos, correspondence and required documentation
Representing:	Paul Santos
Discussion: (00:35:19)	Mondani

	- Questioned whether the sheathing around the property is intended to be permanent or temporary. Santos - Discussed the construction protocol, which includes lowering the building, removing cribbing, cutting steel sheathing, and then backfilling. - Noted that, according to the protocol, steel sheathing is cut and backfilled, indicating that in some cases, portions of the sheeting may remain in place. Allen - Emphasized the importance of avoiding the building remaining elevated throughout the summer, citing concerns over safety and aesthetics. - Stressed the need for assurances that construction will not halt unexpectedly on Memorial Day, leaving the structure in an incomplete state until fall. Santos - Expressed agreement with the concerns raised about the project timeline and potential delays. - Acknowledged the internal consensus on the tightness of the project timeline, especially considering the unpredictable weather in the coming months, emphasizing the lack of guarantees for timely completion. - Pointed out that there are aspects of the project that could proceed without immediately moving the building, such as window work or other preparatory tasks, to keep progress going. - Mentioned that if the building's relocation is postponed until fall, these tasks could still advance the project. - Clarified that the Zoning Board of Appeals (ZBA) permit is specifically for the building move. If the move is delayed, work not related to the move could continue, and the permit would then be utilized for the relocation at a later date. McCarthy - Stated that a draft decision was included in the Packet. - Recommended some formatting and wording edits, but no issue with the merits. - Confirmed the inclusion of condition "E" in the draft decision. - Also noted no letters of opposition were received for this meeting or the previous meeting.
Motion:	Motion to approve the relief as requested, with the conditions in the decision as drafted. (made by: Brescher) (seconded by: Allen) (00:42:41)
Vote:	Carried 5-0 // McCarthy, Allen, Brescher, Marcklinger, O'Mara

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

01-24 HMSW, LLC

25 Sankaty Head Road

The Applicant is seeking a Special Permit pursuant to Zoning Bylaw Section 139-30, and 139-33 A from the intensity regulations of Section 139-16A for the removal and construction of the existing garage structure, and alteration of the dwelling structure. As a result, the ground cover ratio will be 3.23% in a zoning district that requires a maximum ground cover of 3%. Locus is situated at 25 Sankaty Head Road, shown on Assessor's Map 48 as Parcel 3 and upon Land Court Plan No 23903-C, Lot 5. Evidence of owner's title is registered on Certificate Title No. 26309 with the Nantucket County District of the Land Court. The site is zoned Limited Use General 3 (LUG-3).

Voting:	McCarthy, Allen, Botticelli, Marcklinger, O'Mara
Alternates:	-
Recused:	Brescher

Documentation:	File with associated plans, photos, correspondence and required documentation.
Representing:	Matthew MacEachern
Public:	-
Discussion: (01:00:22)	Botticelli - Asked if, with the removal of an addition on the house, the property now meets the ground cover ratio requirements, seeking specific figures to clarify the situation. MacEachern - Indicated that, even after adjustments, the property is still over the allowable ground cover limit, estimating it to be around 3.23%. - Confirmed that the reduction in the house's size was by 454 square feet, from 4,105 square feet to 3,651 square feet. - Clarified that the current request aligns with the amount by which the house size was reduced. Botticelli - Expressed that there would have been a concern only if the property had become compliant with zoning regulations based on the last permit application related to house use, but it never achieved compliance. McCarthy - Acknowledged that there isn't a specific policy on erosion followed by the board. - Recounted personal experiences on the board, noting that they have considered numerous cases and requests from properties where erosion is a significant concern. - Referenced a document in the packet (page 144) that includes an old plan showing a 2.9% ground cover, using this as an example of how the board evaluates properties facing erosion differently than typical lots, particularly in the context of special permit requests as opposed to variance requests. Botticelli - Questioned if this is a single-story garage or if there are plans to add a studio. MacEachern - Stated that there are currently no plans for adding a studio and bathroom, emphasizing the primary use for storage and achieving certain dimensions, but expressed a desire to maintain the option for future additions. Saad - Noted the absence of a condition related to ground cover in the staff report, mentioning that any future plan exceeding 3% ground cover would necessitate relief from the board.
Motion:	Motion to grant the proposed relief, pursuant to staff recommendation. (made by: Allen) (seconded by: Marcklinger) (00:53:39)
Vote:	Carried 5-0 // McCarthy, Allen, Botticelli, Marcklinger, O'Mara

VI. OTHER (VOTES MAY BE TAKEN)

Discussion:	ZBA regular meeting, Thursday, March 14, 2024, at 1:00 PM in person and via Zoom Saad - Addressed a scheduling conflict for the meeting on March 14th, noting it coincides with a joint meeting between the Planning Board, Select Board, and Finance Committee to adopt the ATM articles, which starts at 4 PM on the same day. - Proposed starting the meeting at noon to accommodate this conflict, but will need to confirm with Town Admin.
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	- Sought the board's opinion on the proposed noon start time, indicating there will be four applications on the next agenda.
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VII. ADJOURNMENT (VOTES WILL BE TAKEN)

Motion:	Motion to adjourn. (made by: Botticelli) (00:56:13)
Vote:	Motion carried unanimously.

Submitted by: Elaina Cano