



Planning and Land Use Services

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

Date: 04/07/2024
To: Zoning Board of Appeals
From: Billy Saad,
Zoning Administrator
RE: Staff Report for 03-14-24 ZBA Meeting

I. CALL TO ORDER:

II. APPROVAL OF THE AGENDA:

III. APPROVAL OF THE MINUTES:

- FEBRUARY 8, 2024 & MARCH 14, 2024

Pages
8-17

Staff reviewed the minutes and recommends approval.

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

06-24 Big Chicken Little, LLC

Action Deadline: June 12, 2024

82 Easton Street

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

The Applicant is requesting a Modification of the previously granted Special Permit in File No. 011-04, which was modified in File No. 041-08, File No. 028-12, and File No. 18-18. Specifically, the Applicant proposes to alter and extend the preexisting nonconforming office use in order to convert the existing studio to be used as an office or as a garage apartment or primary dwelling as previously permitted in 2018. The main structure will continue to be used as an office. Additionally, to the extent necessary, Applicant seeks Special Permit relief pursuant to Zoning Bylaw Section 139-18, for a waiver of the onsite parking requirements. Locus is situated at 82 Easton Street, shown on Assessor's Map 42.4.2, Parcel 5, shown as Lot 4 upon Plan Book No. 7 Page 40. Evidence of owners' title is recorded in Book 1363 and Page 44 with the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).

FROM THE MARCH STAFF REPORT:

The 2004 Decision and subsequent 2008 Modification are on **Pages 23-34 of the packet.** The 2004 Decision allowed the previous owner to validate the prior conversion of the pre-existing nonconforming DU into an architect's office with ancillary storage, validated the stacked on-site parking layout, and allowed 2 of the required

5 spaces to be inside the garage. The relief was subject to 3 conditions, namely confirming parking as shown on the Site Plan and restricting ongoing commercial use to one business. The same owner returned to modify the relief in 2008. The request was to 1) demolish the garage, 2) construct a new garage with a studio, and 3) reconfigure the 5 parking spaces. The remainder of the original relief remained substantially in full force and effect. The relief therein was granted when the Locus was Limited Commercial, a district which has been eliminated. The current owner obtained approval in 2018 to convert the 1 ½ story 644± SF garage/studio into either a garage apartment or primary DU, and further relief from the parking requirements of Section 139-18.

Now, the Applicant is seeking relief to alter and extend the preexisting nonconforming office use on the Locus to allow the conversion of the existing studio to be used as 1) an office that can be used separately from the main structure to a business entity, OR 2) as a garage apartment, and OR 3) as a primary dwelling.

The Powers test can be applied for the proposed extension of the preexisting nonconforming office use.

- a. Does the use reflect the nature and purpose of the use prevailing when the zoning bylaw took effect?
- b. Is there a difference in the quality of character as well as the degree of use?
- c. Is the current use different in kind in its effect on the neighborhood?

The property is located in the ROH district, and offices are not allowed per Section 139-7 (use chart). Section 139-18 provides that 1 parking space is required for each 200 square feet of gross floor area for offices, and 1 parking space for the primary residential use. The Decision in 2004 lists the office use as containing approximately 1,000 square feet of floor area. Furthermore, the 2004, 2008, and 2018 decisions limited the property to only one business entity being allowed on the lot. The 2018 relief approved the change of the garage/studio to a garage apartment or primary dwelling (both allowed residential uses in the ROH zoning district which required 1 additional parking space per section 139-18).

Parking requirements.

[Amended 4-6-2015 ATM by Arts. 61, 62, 70, AG approval 8-5-2015; 11-9-2015 STM by Art. 2, AG approval 12-29-2015; 4-2-2016 ATM by Art. 52, AG approval 7-12-2016; 11-6-2017 STM by Art. 19, AG approval 2-26-2018]

Residen- tial [§ 139-7]								
	Zoning Districts	Single- Family Dwelling	Second- ary Dwelling Unit¹	Accessory Dwelling	Tertiary Dwelling/ Tiny House Unit	Apart- ment²	Garage Apart- ment	Studio
Town Residen- tial Districts	R-1 SR-1	1	.6/br	1	N/A	N/A	0.75/br	0
	ROH SOH	1	1	0	N/A	N/A	0.75/br	0

Commercial and Other

Uses

Rooming, lodging and guest houses
Motels, hotels and inns

Restaurants, taverns and bars, including their outside seated-service areas:

Take-out food establishments

Employer dormitories

Retail stores and services

Recreational facilities (commercial)

All above uses

Theaters, auditoriums and other places of public assembly

Offices

Commercial industrial and industrial uses, as specified in the "use chart" in § 139-7A

Storage or office space ancillary to a commercial use

Number of Spaces

3 spaces plus 1 space for each rental unit over 2

2 spaces plus 1 spaces for each 3 rental units plus 1 space for each 3 persons of total certified building occupancy for meetings and functions

ROH: 0 spaces required; RC and CMI in the MIPOD only: 1 space for each 6 seats; RC: 1 space for each 4 seats; all other districts: 1 space for each 3 seats

5 spaces per take-out service station and 1 for each 4 seats

1 space per bedroom

1 for each 200 square feet of gross floor area

1 for each 3 persons of total certified building occupancy

1 space for each 3 employees on peak shift

1 space for each 4 seats

1 for each 200 square feet of gross floor area, except in the CTEC, CI, VN and VTEC where 1 space for each 500 square feet is required

1 for each 900 square feet of gross floor area

0 spaces

Given the parking limitations of the area and the unrestricted nature of the proposal, staff is not supportive of the Applicant's requested relief.

UPDATE:

The Applicant has supplied the draft Decision included on *pages 54-57 of the Packet*. The square footage of the gross floor area of the studio leaves room for interpretation, but regardless of whether it's 341 of 484 square feet, two additional parking spaces are required per the By-law, and has no change on the relief requested.

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

03-24 Arthur I. Reade Jr., Trustee of 90 North Liberty Preservation Trust

90 North Liberty Street

Action Deadline: July 10, 2024

The Applicant is seeking a Special Permit pursuant to Zoning Bylaw Sections 139-30, and 139-33.A, to alter the pre-existing, nonconforming garage structure by adding a second story within the setback area. The structure is preexisting nonconforming to rear yard setback. No new nonconformities will be created. Locus is situated at 90 North Liberty Street, shown on Assessor's Map 41, Parcel 22, and shown as Lot 1 on Plan Book 19 Page 83. Evidence of owner's title is recorded in Book 1777 and Page 01 with the Nantucket County Registry of Deeds. The site is zoned Residential-1 (R-1).

The Locus is an oversized lot containing approximately 19,769 SF of lot area in the R-1 zoning district. The garage structure is pre-existing nonconforming with respect to rear yard setback, being as close as 0.5 feet from the rear lot line. Additionally, a structure with a footprint of approximately 66 SF is currently sited 0' from the rear lot line. The Applicant has indicated that this structure is proposed to be moved outside of the setback area. The lot is otherwise dimensionally compliant.

The project consists of an addition resulting in a vertical expansion within the westerly rear yard setback. Specifically, a 2nd floor addition within the setback area and extending the structure to the south. The addition will not be closer to the lot line as shown on **Page 66 of the packet**. The applicant recently received HDC approval “through staff”, which has not been finalized.

A narrative of the scope of work concerning the construction methodology is on **Pages 71-72 of your packet**. No letters of concern 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. [...]

Staff recommends approval of the Applicant’s request with the following findings and conditions:

Finding:

- 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 garage structure to the neighborhood, and are within the spirit and intent of the Bylaw.

Conditions

- 1) The proposed alterations and expansion shall be in substantial compliance with the Proposed Conditions shown upon “Exhibit A”;
- 2) The project shall be completed in substantial conformity with the plans approved in connection with Certificate of Appropriateness No. HDC-2024-01-9846;
- 3) There shall be no exterior construction allowed between Memorial Day and Labor Day of any given year for the work contemplated herein; and,
- 4) There shall be no further alterations or expansion of the structure within the five-foot required rear yard setback area without further relief from this Board.

Pages **07-24 Scott Kurland & Candice McDonough Kurland**

334 Madaket Road

81-97 **Action Deadline: July 10, 2024**

The Applicants are seeking Variance relief pursuant to the Zoning Bylaw Section 139-32 to move the existing dwelling on the property as far away from the coastal bank as reasonably necessary. Locus is situated at 334 Madaket Road and shown as the parcel marked “Area – 10,388 sq” upon Plan Book 21, Page 66. Evidence of owners’ title is recorded in Book 1771 and Page 236 with the Nantucket County Registry of Deeds. The site is zoned Village Residential (VR).

The Applicants are seeking Variance relief for a waiver from the setback provisions of Section 139-16.A, in order to relocate the existing dwelling upon the locus, as far away from the coastal bank as reasonably possible. Locus is an undersized lot of record containing approximately 10,388 square feet of lot area in the VR zoning district.

As with previous applications of this nature, an eroding coastal bank has placed the existing dwelling in danger. In order to protect it, the Applicant is proposing to relocate it to the northeasterly side of the lot as far from the eroding bluff as possible. The proposed site plan is on **Page 88 of the packet**.

Prior relief was granted in ZBA File No. 46-17, see *Pages 85-94 of the packet*. No letters of concern were received.

Staff recommends approval of the Applicant's request with the following finding:

Finding:

- 1) That owing to circumstances relating to the soil conditions, shape, and topography of the Locus and the rapidly eroding coastal bank and location of the dwelling structure, and especially affecting the Locus but not affecting generally the Village Residential zoning district, a literal enforcement of the provisions of the By-law, and specifically Section 139-16, would involve substantial hardship, financial or otherwise, to the Applicant, 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 the By-law.

Pages 08-24 Mark W. Howard and Kristina M. Howard, Trustees of the Howard Living Tr. 13A Willard Street
98-134 Action Deadline: July 10, 2024

The Applicants are seeking Special Permit relief pursuant to the Zoning Bylaw Section 139-33.A.(1)(a) to alter and expand the pre-existing nonconforming condominium use upon the premises and construct a new structure, and, if necessary, a Special Permit, pursuant to 139-17 of said Bylaw, to permit the new structure to be 30.1 feet in height above average mean grade. In the alternative and to the extent necessary, the Applicants are seeking Variance relief pursuant to Zoning Bylaw Section 139-32. Locus is situated at 13A Willard Street and shown on Assessor's Map 42.4.1 as Parcel 15.1, and as Unit No. 1 in Condo Plan No. 55-V. Evidence of owner's title is registered on Certificate of Title No. U42139 at the Nantucket County District of the Land Court. The site is zoned Residential-10 (R-10).

The Applicants are proposing to raze the existing cottage and construct a new cottage in place thereof (Unit 1) on the site, which contains three (3) pre-existing nonconforming dwelling units validated through a previous ZBA decision in 1992. The proposed relocation of the dwelling will not create any new nonconformities, and the new foundation will result in compliance with FEMA regulations. The existing dwelling structure contains 3 bedrooms, and 2 bathrooms, and the proposed new dwelling is proposed to contain 4 bedrooms and 3 bathrooms. Staff notes that Units 2 and 3 received prior approval, similar to what's before the Board now. Both decisions are on *Pages 120-128 of the Packet*.

The Powers test can be applied, which requires that the proposed changes will not be significantly more detrimental to the neighborhood than the existing nonconforming use or structure.

a. Does the use reflect the nature and purpose of the use prevailing when the zoning bylaw took effect?

Condominium use authorized by special permit.

b. Is there a difference in the quality of character as well as the degree of use?

No proposed change as a single-family dwelling, however, the proposed changes to the structure result in approximately 184 square feet of additional ground cover, 1 additional bedroom, and 1 additional bathroom.

c. Is the current use different in kind in its effect on the neighborhood?

Remaining a single-family dwelling

In addition, the Applicants are seeking Special Permit relief to exceed the R-1 zoning district's 30' height limit to 30.1' ridge height above average mean grade, pursuant to Section 139-17.C(7), which reads:

A. Building and structure height is measured as the average height of all sides of a building or structure from the average mean grade to the highest point of the building and/or structure. There shall be only one highest point for each building and/or structure. No one building and/or structure side shall exceed 32 feet, except in the CDT and CMI Districts, or as otherwise permitted. Height limitations, except as noted in the Village Height Overlay District and the Nantucket Cottage Hospital Overlay District, shall be as follows: [Amended 4-6-2015 ATM by Art. 70, AG approval 8-5-2015; 4-2-2016 ATM by Art. 36, AG approval 7-12-2016; 11-6-2017 STM by Art. 19, AG approval 2-26-2018; 6-5-2021 ATM by Art. 63, AG approval 10-7-2021]

	Zoning District	Maximum Height
Country Overlay District	SR-1, SOH, SR-10, SR-20, LUG-1, LUG-2, LUG-3, MMD, VN, VTEC, VR	30
Town Overlay District	R-1, ROH, R-5, R-10, R-20, R-40, CDT, CN, CTEC, CI, RC, RC-2	30
Town Overlay District	CMI	30 ¹

(...)

C. Exceptions by special permit. The special permit granting authority may grant a special permit to allow the following structures to exceed such height limitations:

(...)

7. The height of a structure which is situated within the "Areas of one-hundred-year Flood" and/or the "Areas of 100-Year Coastal Flood with Velocity" as established by the Federal Emergency Management Agency ("FEMA") and depicted upon the Flood Insurance Rate Map promulgated by FEMA, as from time to time revised, shall not exceed 30 feet above the minimum height at which the first floor of the structure will conform with all applicable building codes and FEMA requirements, except in the CDT District where a maximum height may be determined by special permit.

Staff recommends approval of the Applicant's request with the following findings and conditions:

Finding:

- 1) That the proposed removal of the existing single-family dwelling and the construction of a new single-family dwelling as shown on the attached Exhibit A is in harmony with the general purpose and intent of the Zoning Bylaw and that the extension of the nonconforming use is not substantially more detrimental to the neighborhood than the existing nonconformity. Additionally, the Board validates the average mean grade ridge height of 30.1' pursuant to Zoning Bylaw Section 139-17C.(7) as the Condominium and Locus are located within the 100-year flood plain and subject to coastal storm flow.

Conditions:

- 1) The proposed alterations and expansion shall be done in substantial conformity with the plans approved by the Nantucket Historic District Commission Certificate of Appropriateness No. HDC2023-12-9590;
- 2) The project shall be completed in accordance with the attached Exhibit A; and,
- 3) There shall be no exterior construction between Memorial Day and Labor Day of any given year.

09-24 Leslie Johnson

51 Washington Avenue & 281 Madaket Road

Action Deadline: July 10, 2024

The Applicant is seeking Special Permit relief pursuant to Nantucket Zoning By-law Sections 139-30 and 139-2 to install a residential swimming pool on a lot that has a combined lot area of 34,400± SF with a single-family primary dwelling and secondary dwelling. The property is located at 51 Washington Avenue and 281 Madaket Road and shown on Assessor's Map 59.4 as Parcels 243 and 292 and as Lots 73, 74, 75, 86, 87, and 88 upon Land Court Plan 3092-S. Evidence of owner's title is registered as Certificate of Title Nos. 16490 and 29300 at the Nantucket County District of Land Court. The site is zoned Village Residential (VR).

The applicant provided a detailed description of the proposed work, which is included in your packet. These lots are held in common ownership and have merged for zoning purposes.

Swimming pools and spas are permitted by special permit in the VR district subject to the following standards listed in Zoning Bylaw Section 139-2A (Definitions):

SWIMMING POOL - RESIDENTIAL

A structure designed to be used for recreational purposes, either above or below grade, containing water more than 24 inches in depth and exceeding 150 square feet of water surface area, or exceeding 1,000 gallons. This shall not include ornamental ponds, decorative water features, including, but not limited to, fountains, bird baths, and the like. The swimming pool must be located on the same or contiguous lot as a residential dwelling or constructed for the benefit of a group of residences, such as a multifamily development, subdivision, or in conjunction with a neighborhood association. In the VR District only, the Zoning Board of Appeals, acting as the special permit granting authority, may grant a special permit to allow a residential swimming pool or hot tub/spa on a lot, subject to the following criteria being met: (1) the lot must meet or exceed the minimum lot size for the district, and (2) side and rear yard setbacks of 20 feet shall apply to the residential swimming pool and associated mechanical equipment.

Further, Section 139-30 (Special Permits)

- A. The special permit granting authority shall be the Board of Appeals for all special permits, except those special permits for which the Planning Board is specifically designated by any provision of this chapter. In instances where any portion of a project involves a special permit application to the Planning Board for an apartment, apartment building, elder housing facility, medical marijuana treatment center, recreational marijuana establishment, neighborhood employee housing, secondary dwelling, or tertiary dwelling all pursuant to § 139-2, business commercial, commercial industrial, and industrial uses as categorized in the "Use Chart" pursuant to § 139-7A, residential development options pursuant to § 139-8, and for certain uses in the Public Wellhead Recharge District pursuant to § 139-12B, the Planning Board shall serve as the special permit granting authority for all other special permits required in connection with such project.
- (1) The special permit granting authority shall issue special permits for structures and uses which are in harmony with the general purpose and intent of this chapter subject to the provisions of such chapter.
 - (2) Such permits may impose conditions, safeguards and limitations intended to ensure that the use or structure is in harmony with the general purpose and intent of this chapter.

Staff notes that the proposal meets the standards. Sample conditions are included below for your review.

- a. All chemical treatments of the spa water shall stop three weeks prior to any draining or discharging of the spa. If this is infeasible, the owner shall engage a professional company to discharge the pool water in a tanker and dispose of it at the Wastewater Treatment Facility;
 - b. If a municipal water source is not available, the owner shall engage a professional company to fill the spa as needed;
 - c. The pool shall not be chemically treated between November 1 and May 1 of any given year;
 - d. The location of the pool, pool equipment, and landscaping shall be installed substantially as shown on the plan entitled, "Site Plan for Pool Installation", prepared for Leslie Johnson, prepared by Nantucket Engineering and Survey, Inc., dated November 28, 2023, a reduced copy of which is attached hereto as Exhibit A;
 - e. No landscape lighting relating to the pool was proposed or approved, except for the lighting in the pool as may be required for safety. In the future, any proposed landscape lighting relating to the pool shall be reviewed by the Board at a public hearing and shall be subject to a request for further relief.
 - f. All work shall be done in substantial conformity with Certificate of Appropriateness No. 2023-12-9679, duly issued by the Nantucket Historic District Commission.
- **Placement of mechanical equipment associated with the pool shall be subject to condition at the board's discretion****
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VI. OTHER (VOTES MAY BE TAKEN)

ZBA regular meeting, Thursday, May 9, 2024, at 1 PM in person and via Zoom

VII. ADJOURNMENT (VOTE WILL BE TAKEN)
