



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 ~~

Monday, July 11, 2024

Public Safety Facility, 4 Fairgrounds Road, Community Room
This meeting was held in person and via remote participation using ZOOM.

I. CALL TO ORDER

Called to order at 1:02 pm and Announcements made by Ms. McCarthy

Staff in attendance: William Saad, Land Use Specialist, George Pucci, Town Counsel
Attending Members: McCarthy, Allen, Brescher, Marcklinger, Mondani, O'Mara
Remote attendance: Botticelli
Absent: Poor
Late Arrivals: -
Early Departures: Botticelli

II. APPROVAL OF AGENDA

Motion: Motion to Approve the agenda, as drafted. (made by: Brescher) (seconded by: Allen)
Vote: Carried 6-0 // McCarthy, Allen, Brescher, Botticelli, Marcklinger, Poor (aye)

III. PUBLIC COMMENT

Chair McCarthy called for public comment. There were no public comments.

IV. APPROVAL OF MINUTES – MAY 9, 2024, AND MAY 30, 2024

Motion:	Moved to approve the minutes of May 9, 2024, and May 30, 2024. (made by: Marcklinger) (seconded by: Allen)
Vote:	Carried 7-0 // McCarthy, Allen, Brescher, Botticelli, Marcklinger, Mondani, O'Mara (aye)

I. REMAND HEARINGS (CONTINUED PUBLIC HEARINGS)

11-24 Cathy Ward

9 West Dover Street

Pickering-Cook

(Under remand from Commonwealth of Massachusetts Land Court No. 22 MISC 000064 MDV)

Applicant is appealing a determination by the Building Commissioner that the use of 9 West Dover Street as a short-term rental ("STR") business is not a commercial use prohibited in the residential zone in which it is located. Applicant requests that the Zoning Board of Appeals overturn the Commissioner's determination with respect to the property and further that zoning enforcement action be taken by issuing an order to the owner to cease and desist using the property as an STR. The Locus is situated at 9 West Dover Street, is shown on Assessor's Map 55.1.4 as Parcel 189 and in Plan Book 7, Page 29. Evidence of title is recorded in Book 1581, Page 238 on file at the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).

Voting:	McCarthy, Allen, Brescher, Marcklinger, O'Mara
Alternates:	Mondani
Recused:	-
Documentation:	File with associated plans, photos, correspondence and required documentation
Representing:	Nina Pickering-Cook
Discussion:	Allen - Clarified that during the last meeting, concerns were raised about board member Lisa Botticelli's comments regarding her Silver Street neighborhood.

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	- Although she was sitting as an alternate and not voting, it was emphasized that any personal comments from board members should be clearly identified as personal opinions, not as statements from the Zoning Board of Appeals. - It was suggested that in such cases, the member should step down from the board table, join the audience, and speak as a resident to avoid any confusion. Botticelli - Explained that after consulting with the attorney, it was confirmed that there is no issue with participating as a board member in discussions related to Silver Street, despite living nearby on Pine Street. - Although not on the abutters list and not a voting member, the speaker acknowledged the importance of clarifying personal opinions during board discussions. - Expressed a willingness to step down and refrain from commenting if any perceived conflict arises, particularly if Alisa or others feel it is necessary. Allen - Stressed that while it's important for board members to express their opinions as community members, clarity is essential when doing so. - Given Lisa's roles as a former ACT NOW board member, a current ZBA board member, and a resident of the Pleasant Street/Silver Street neighborhood, it's crucial to specify which capacity they are speaking in—whether as a private citizen, a ZBA board member, or in connection with ACT NOW. Botticelli - Clarified that while previously serving on the ZBA, was also an advisory board member for ACT NOW, but never a board member of ACT NOW itself. Instead, served on the board of ACT NOW Community Initiatives, which focuses solely on the Lead to Locals program, unrelated to short-term rental advocacy. - Emphasized that when speaking as a ZBA board member, she also speaks as a citizen, not as a public abutter, and that her comments about neighborhood changes were based on personal experience living in town rather than as an abutter. McCarthy - Noted that a community member has also expressed concerns to her. - Highlighted that it is up to each board member to decide whether to voluntarily recuse themselves from a discussion. Botticelli - Stated the decision to exit the meeting completely. Robert McLaughlin, Attorney representing Peter and Linda Grape (Owners of 9 West Dover Street) - Requested that submissions from attorneys Dan Bailey and Steven Cohen be included in the official record and expressed a desire to respond to a recent submission by Attorney Cook. - Stated Cook's proposal to create a new "vacant use" category and argued that her method for regulating short-term rentals based on income tax returns is impractical and could lead to legal challenges. - Warned that basing rental allowances on past history unfairly limits future rentals and could result in unequal treatment under the law. - Concluded by stating that short-term rentals under 182 days per year should be considered accessory use, as the ZBA now has the authority to define this.
Public Comment:	Darlene DeMichele - Commented as a resident of Bird Song Lane in the historic district, raising concerns about a neighbor renting out properties to a membership club, resulting in significant guest turnover and disruption.

- Urged the board to enforce the current bylaw, which limits rentals to the amount of time the owner occupies the property.
- Questioned whether separate residency requirements would apply to each dwelling if both are rented.
- Expressed serious concerns that the proposed accessory use definitions could be manipulated, allowing rentals without restrictions, particularly in shoulder months.
- Requested that the board uphold the current definition and reconsider shoulder month restrictions to preserve the neighborhood's tranquility.

Dennis Murphy, Hill Law on behalf of Nantucket Land and Water Council

- Clarified that the Land Council's interest stems from the impact of zoning on natural resources.
- Advised against considering unrelated legal cases, focusing only on the established record.
- Emphasized that the judge ruled STRs are not allowed as a principal use because they aren't specified in the bylaw.
- Argued that the Grapes' STR use, being twice as frequent as personal use, is not accessory.
- Concluded by urging the board to align its interpretation with other town regulations and not count vacant days as occupied.

Linda Grape

- Shared the family's 40-year history with Nantucket and their goal of owning a home on the island.
- Emphasized that with retirement approaching, they are using the home more and renting it less, as shown in their recent statistics.
- Stressed that renting was not the primary purpose for buying the home, and they enjoy it year-round.
- Noted that they have a guest house which they do not rent and, in an effort to be environmentally responsible, prefer to stay in the guest house when it's just the two of them to minimize energy use.

Nina Pickering-Cook, Attorney on behalf of Cathy Ward

- Acknowledged that if the Grapes are now using their property more than renting it, it would indeed qualify as accessory use.
- Stressed that the decision now lies with the board, focusing on whether the Grapes' past use, with over 70% of the time being rental, qualifies as accessory use under the bylaw.
- Pointed out that according to the court, accessory use must be minor compared to the primary use, and since the Grapes rented the property more than they used it, it cannot be considered accessory.
- Urged the board to end the case by ruling that the Grapes' past use was excessive and to require that future rentals be less than their personal use to avoid further litigation.

George Pucci, Town Council (KP Law, PC)

- Clarified that Town Counsel was not involved in the original proceedings when the board heard the Ward enforcement request. Instead, Town Counsel defended the board's decision in land court after it was issued.

McCarthy

- Questioned whether the board should focus solely on the main house or consider the entire property, including the guest house, when determining the use.
- Highlighted that as a second home, the property is not expected to be occupied year-round and wondered if the board still has the discretion to determine how to count

days of use.

- Emphasized that the owners should have the freedom to decide when to use their Nantucket property, whether it's the main house, guest house, or any other part of the property.

Allen

- Raised the issue of how to count days when the owners stay in their guest house while the main house is rented.
- Questioned whether these days should be considered personal use since they are on the property, even though the main house is rented.
- Sought clarity on how to account for these situations when determining whether the property's use meets the definition of accessory use.

Pucci

- Clarified that the board is bound by the number of days specified in Judge Vay's findings but has the discretion to interpret their significance.
- Highlighted that there is no clear-cut rule on how to consider vacant days or days the owners are present while the property is rented.
- Emphasized that each case should be evaluated based on the specific facts, including the property's use, the owner's intent, and how it was rented, rather than relying on a strict number of days analysis.

Pickering-Cook

- Clarified that the board doesn't need to calculate the days of use, as the court has already determined this.
- Emphasized that the judge has identified the main house as the principal use of the property, which is legally relevant for zoning purposes.
- Noted that although the Grapes have used the secondary dwelling more, the focus should remain on the main house, as the judge has based his decision on its use.

Pucci

- Clarified that while the board is bound by the facts Judge Vay set forth for the years in question, they are not limited to only those facts.
- Explained that the board cannot hear new evidence that contradicts the judge's findings but can consider additional facts that complement the existing record.
- Emphasized that the board's task is to interpret the bylaw and determine whether the Grapes' use of the property is subordinate and customarily incidental to a permitted use, considering customary practices on Nantucket.

McLaughlin

- Highlighted that Judge Vay determined the property was primarily used for short-term rentals rather than family use, which is not permitted under the bylaw.
- Noted that while Attorney Cook argued for a decision on accessory use, the judge deferred this decision to the board, tasking them with defining what constitutes an accessory use.
- Emphasized that this determination is complex and should be based on comparing the number of days the property is used for different purposes.

Edward Sanford

- Submitted a letter to the Board for consideration.

Anne Dewez

- Stated that the key issue is whether vacant days should count as owner use and dismissed concerns about the difficulty of tracking days as irrelevant.
- Emphasized that accurate day tracking is crucial for determining if rental use exceeds accessory use.

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	- Urged the board to be cautious about counting vacant days as owner use and noted that Nantucket relies on citizens to follow and monitor rules due to limited resources. Murphy - Stressed that limiting STRs to accessory use only is crucial for reducing their intensity on Nantucket. - Emphasized that how the board defines accessory use will have significant environmental implications, which is why the Land and Water Council is concerned. Allen - Disagreed with the idea that neighbors should police each other, expressing a desire not to live in a community where residents report on one another. - Highlighted a gray area in defining accessory and primary use, questioning how stays by relatives, friends, or other non-paying guests should be considered under these definitions. Patsy Wright - Mentioned that when they rented out their house, their water bill tripled. Linda Grape - Clarified that over the seven years of owning the property, their family's total use of both units has consistently exceeded 50%. Jeff Drazen - Highlighted the distinction between short-term rentals, which are done for profit, and allowing friends or family to use the property for personal reasons. - Emphasized that the atmosphere created by guests using the property for personal matters, like mourning, differs significantly from that of a rental group there to party. Member of the public – did not state her name (1:00:17) - Observed that if the bylaw had been enforced properly, the current issues wouldn't have arisen, suggesting that a lack of action by authorities led to the situation. - Noted that manipulation of definitions may have contributed to the problem, causing stress and wasted resources. - Added from personal experience that keeping track of days spent at a short-term rental property is not difficult.
Motion:	Moved to close the public hearing. (made by: Brescher) (seconded by: O'Mara)
Vote:	Carried 5-0 / / McCarthy, Allen, Brescher, Marcklinger, O'Mara (aye)
Discussion:	Pucci - Reminded the board that their role is not to amend or clarify the bylaw or create rules for the entire island, but to interpret the accessory use provision based on the specific facts of each case presented. - Encouraged the board to refer directly to the judge's decision, noting that it is clear and should guide their interpretation, rather than relying solely on opinions from others. Marcklinger - Expressed the opinion that, based on the explanation of the law in this case, the current use does not seem to be subordinate or customarily incidental, and therefore does not meet the required standard for accessory use. Brescher - Struggled with how to define and categorize the principal use of the property, particularly when the owners are not physically present. - Acknowledged the importance of understanding the customary and incidental aspects of accessory use but found it challenging to articulate a definition that accurately counts or excludes days without leading to unintended consequences.

O'Mara

- Believed that short-term rentals are a customary and permitted residential use of dwellings and that this use is subordinate and incidental to the primary residential use.

Allen

- Argued that the Grapes' actions—staying at their property, renting it out, and their overall intentions—are typical for Nantucket and align with how many residents afford to maintain their homes.
- Expressed difficulty in determining the significance of days the property is vacant versus rented.
- Emphasized that renting out a home is not a criminal act but a common practice that helps many Nantucket residents, including the middle class, sustain their lives on the island.
- Defended the Grapes' behavior as consistent with the intention of short-term rentals and saw nothing improper or out of line in their actions.

Mondani

- Stated that the use of short-term rentals (STRs) is customary on Nantucket and should be viewed simply as rentals, rather than being treated as a negative or new concept.
- Agreed that the term "STR" is often misused and emphasized that it's essentially just a rental practice.
- Expressed that the board should consider the entire year (365 days) when evaluating whether a use is subordinate, not just the summer months.
- Stated that even minimal rental activity over the course of a year could still be considered subordinate, suggesting that one day of rental out of 365 would not constitute primary use.
- Argued that the issues raised by Ms. Ward, such as noise and minor disturbances, do not relate to the central question of the case.
- Stated that based on these specific facts, there is no basis for ruling against the use in question.

McCarthy

- Agreed with the perspective that the focus should be on the property's availability to the owner year-round (365 days), rather than strictly counting the days the property is used or rented.
- Expressed concern about the implications of policing occupancy days, noting that it could lead to broader issues.
- Aligned with other board members in viewing the Grapes' use of their property as customary and accessory.
- Concluded that based on the accepted facts and testimony, the Grapes' use of the property in the ROH District is incidental to its primary use as a home for their family and extended family when not rented.

Pucci

- Agreed to work with staff in preparing it, based on the record, minutes, and evidence.
- Felt confident that a draft could be created that addresses the board's concerns and reflects the consensus discussed.
- Suggested that after the draft is prepared, the board could review, deliberate, and decide if any revisions are needed before finalizing and voting on the decision.
- Agreed to the August 15th deadline for reporting to the court but suggested completing the quick hearing today to address related issues, noting that they involve many of the same concerns, particularly regarding customary practices on the island.

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Motion:	Moved to continue to the August 15, 2024, meeting. (made by: Brescher) (seconded by: Allen)
Vote:	Carried 5-0 / / McCarthy, Allen, Brescher, Marcklinger, O'Mara (aye)

20-24 Christopher Quick

15 Delaney Road

Pickering-Cook

(Under remand from Commonwealth of Massachusetts Land Court No. 23 MISC 000056 MDV)

The Applicant is appealing the Building Commissioner's September 21, 2022, determination pursuant to Zoning Code Section 139-31A-(1) and Massachusetts General Laws Chapter 40A, Sections 8 and 15. The Building Commissioner determined that the use of the Property for short-term rentals ("STR") does not violate Nantucket's Zoning Bylaw. Locus subject to the appeal is situated at 15 Delaney Road, shown on Assessor's Map 30 as Parcel 635 and upon Land Court Plan 14695-C. Evidence of owner's title is registered on Certificate of Title No. 25803 with the Nantucket County District of the Land Court. The site is zoned Residential-1 (R1).

Voting:	McCarthy, Allen, Brescher, Marcklinger, O'Mara
Alternates:	Mondani
Documentation:	File with associated plans, photos, correspondence and required documentation
Representing:	Kristen R. Gagalys, Anderson & Krieger LLP
Discussion:	Dan Bailey, Pierce Atwood, LLP, attorney representing the Ralph and Bonnie Keith - Emphasized that short-term rentals have been customary on Nantucket for a long time and urged the board to adopt a practical, workable standard—such as considering the entire 365-day year and determining if rental exceeds 183 days, which would make it the predominant use. - Suggested that the board consider each case holistically, as the situation can vary from house to house, and that the Keiths' use of their home should be viewed in this context. Pucci - Suggested incorporating the record of customary practices from the Ward hearing to avoid redundant testimony. - Advised that if there are still factual issues to explore, the board might consider keeping the hearing open for another session. However, if everything necessary has been submitted, the board could proceed with making findings of fact based on the existing record.
Public Comment:	There was no public comment.
Motion:	Moved to incorporate the public comments and evidentiary submissions from the Ward case into the Quick case as well. (made by: Brescher) (seconded by: Allen)
Vote:	Carried 5-0 / / McCarthy, Allen, Brescher, Marcklinger, O'Mara (aye)
Discussion:	McCarthy - Noted that some homeowners rent their properties during the off-season, from October through May, which could easily exceed 182 days and complicate the assessment of what constitutes the predominant use. Marcklinger - Commented that the 182-day threshold shouldn't be the main focus, viewing it more as a fallback option. - Emphasized that the primary rental season is between Memorial Day and Labor Day, where most of the rental activity occurs. Mondani - Highlighted the importance of considering the quieter days when the property is not occupied, not just focusing on the busiest months. - Emphasized that these quieter periods, when there is less noise and activity, are significant in evaluating the overall use of the property.

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	Pickering-Cook - Clarified that long-term rentals during the off-season, such as renting to someone for 190 days, are considered residential use and are covered under the bylaw. - Emphasized that the board's current decision should focus solely on accessory use for short-term rentals, not on long-term residential rentals
Motion:	Moved to close the public hearing. (made by: Allen) (seconded by: Brescher)
Vote:	Carried 5-0 / / McCarthy, Allen, Brescher, Marcklinger, O'Mara (aye)
Discussion:	O'Mara - Noted that his comments are very similar to those made in the previous case. Allen - Expressed that she felt the same way about this case as you did about the last one. Mondani - Stated that his comments are the same as in the previous case but find this case even easier to decide. - Acknowledged that while the rental numbers might be higher, believed this situation is more in line with what the bylaw allows. Brescher - Echoed Jim's sentiments, acknowledging both the similarities and differences between this case and the Ward and Grape matters. - Expressed that this case seems more in line with traditional property rental and usage on Nantucket. - Agreed with the same comments made in the previous case and preferred to see a draft decision before voting. Marcklinger - Stated that he hasn't made up his mind yet and will wait to review the draft decision before making a final judgment. McCarthy - Agreed with the general sentiment that the use described in the affidavit aligns well with long-standing practices on the island. - Highlighted that this tradition of renting before buying is a common way for people to get to know the island and eventually own property. - Expressed a preference to see a draft decision before making a final vote.
Motion:	Moved to continue to the August 15, 2024, meeting. (made by: Brescher) (seconded by: Allen)
Vote:	Carried 5-0 / / McCarthy, Allen, Brescher, Marcklinger, O'Mara (aye)

II. OLD BUSINESS**14-24 John P. Pearl & Lynn C. Pearl, as Trustees of the John P. Pearl Trust – 2018 & the Lynn C. Pearl Trust – 2018, and David A. Jackson & Cynthia M. Jackson 10 Main Street & 1 Gully Road Alger**

The Applicants are seeking relief by Variance pursuant to Zoning By-law Section 139-32 in order to allow the property, currently a two-unit condominium, to be removed from the provisions of MGL Chapter 183A(Condominiums) and subdivided into two nonconforming lots. The Locus is situated at 10 Main Street, and 1 Gully Road, shown on Tax Assessor's Map 73.2.4 as Parcels 32.1 & 32.2, and shown in Plan Book 20, Page 123. Evidence of the Owner's title is recorded in Book 1629, Page 202, and Book 1618, Page 135 on file at the Nantucket Registry of Deeds. The site is zoned Limited Use One (LUG-1).

Voting:	McCarthy, Allen, Brescher, Marcklinger, O'Mara
Motion:	Moved to continue to the July 17, 2024, meeting. (made by: Brescher) (seconded by: Allen)
Vote:	Carried 5-0 / / McCarthy, Allen, Brescher, Marcklinger, O'Mara (aye)

18-24 43 W. Miacomet, LLC**43 West Miacomet Road****Cohen**

The Applicant is requesting a Special Permit pursuant to Sections 139-13, 139-30, and 139-33A of the Nantucket Zoning Bylaw to demo the existing house and construct a new dwelling, shed, and install a pool and related pool equipment. The file with a copy of the complete description of the proposal is available for review at Planning and Land Use Services. The property is located at 43 West Miacomet Road and shown as Nantucket Tax Assessor's Map 86 Parcel 13.2, Lot 31 on Land Court Plan 17368-K. Owner's Title is shown as Certificate #27184 on file with the Nantucket County District of Land Court. The Locus is zoned Moorlands Management District (MMD).

Motion:	Moved to continue the discussion to July 17, 2024. (made by: Brescher) (seconded by: Allen)
Vote:	Carried 5-0 / / McCarthy, Allen, Brescher, Marcklinger, O'Mara (aye)

III. NEW BUSINESS**12-24 South Siasconset Neighborhood Association****1 Magnolia Avenue, 10 Grand Avenue,****7R, 10, 11, 16, 17, 19 Ocean Avenue, 2, 4, and 5 Cottage Avenue****Cohen**

The Applicant is appealing the Building Commissioner's April 17, 2024, determination pursuant to Zoning Bylaw Section 139-25 and 139-31. The locus is situated at 1 Magnolia Avenue, 10 Grand Avenue, 7R, 10, 11, 16, 17, 19 Ocean Avenue, 2, 4, and 5 Cottage Avenue. The appeal consists of numerous parcels as identified on the Zoning Board of Appeals application (known as "The Summer House"), a complete record of the application, supporting materials, and relevant documents are available for public review at the Office of Planning and Land Use Services. The site is zoned Siasconset Old Historic (SOH) and Village Neighborhood (VN).

Motion:	Moved to continue the discussion to July 17, 2024. (made by: Allen) (seconded by: Brescher)
Vote:	Carried 5-0 / / McCarthy, Allen, Brescher, Marcklinger, O'Mara (aye)

19-24 Steven L. Cohen as Trustee of Area 51 Trust**51 West Miacomet Road****Cohen**

The Applicant is requesting a Special Permit pursuant to Sections 139-13, 139-30, and 139-33A of the Nantucket Zoning Bylaw to demo the existing house and construct a new dwelling, shed, and install a pool and related pool equipment. The file with a copy of the complete description of the proposal is available for review at Planning and Land Use Services. The property is located at 51 West Miacomet Road and shown as Nantucket Tax Assessor's Map 81 Parcel 52, Lot 9 on Land Court Plan 17368-D. Owner's Title is shown as Certificate #29355 on file with the Nantucket County District of Land Court. The Locus is zoned Moorlands Management

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District (MMD).

Motion:	Moved to continue the discussion to July 17, 2024. (made by: Allen) (seconded by: Brescher)
Vote:	Carried 5-0 / / McCarthy, Allen, Brescher, Marcklinger, O'Mara (aye)

21-24

126R Main Street

Williams

The Applicant is requesting relief by Special Permit pursuant to Zoning Bylaw Section 139-33.A(1)(a). Specifically, the Applicant is seeking to renovate and relocate the garage structure within the nonconforming easterly side yard setback area, reducing the setback encroachment from its current position of .0 feet from the easterly side yard lot line to approximately 2 (two) feet at its closest point. Locus is situated at 126R Main Street and shown on Assessor's Map 42.3.3 as Parcel 98.1. Evidence of the Owner's title is recorded in Book 1942, Page 74, and shown as Lot 2C in Plan No. 2023-29 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
Documentation:	File with associated plans, photos, correspondence and required documentation
Representing:	Linda Williams - Explained that the letter just received today from the structural engineer was delayed because the engineer couldn't visit until last week. - Noted that the letter, received this morning, relates to the garage structure and supports the request to demolish and rebuild it exactly as approved by the HDC. - Requested that the decision include provisions for both scenarios: whether the structure survives the move or doesn't. - Emphasized the need for permission to rebuild exactly as approved by the HDC if the structure doesn't survive.
Discussion:	Saad - Pointed out that the information in question is inaccurate and referenced the addendum currently under review. - Recalled a previous conversation where additional facts were discussed during the staff report's preparation, which made sense at the time but wasn't advertised. - Indicated that due to this oversight, it may not be something the board can vote on. McCarthy - Suggested following the typical procedure for moving an old structure, acknowledging the risks involved. - Proposed that if the board approves the move and ensures that the structure doesn't lose its status in the process, then what replaces it doesn't matter as long as it conforms to the approved setback, footprint, and plan.
Public Comment:	Hillary Hedges Rayport - Raised several questions and concerns about the application, particularly regarding the rear lot with a driveway less than 11 feet wide and the pre-existing garage, created under a 4181L division of land in 2012. - Expressed concern that the current case is not just about moving a structure 12 feet but involves a development plan that worsens the non-conformity. - Urged the board to consider upholding the zoning regulations to maintain safety, neighborhood livability, and aesthetics, as the proposed changes appear to compromise these standards. - Argued that the lot is non-conforming and that adding a second dwelling and converting the garage into a livable space creates a material detriment to the

neighborhood.

- Highlighted concerns about the significant change in use, including the addition of a large patio and a fire pit, which, while temporary, contribute to the dramatic shift in how the parcel is used.

Williams

- Clarified that the fire access and overall situation remain unchanged.
- Noted that while there was a desire to move the garage back further, it wasn't permitted.
- Emphasized that the structure is not a secondary dwelling but a standalone dwelling on its lot, and the driveway has always been the same.
- Pointed out that neighboring property owners at 124 have a zero setback, meaning they are within their setback limits.

Brescher

- Pointed out that if the garage were simply demolished, the owners could potentially obtain a building permit and construct a new main structure on the lot without the current restrictions.

Saad

- Reiterated that the 4181L process validates the entire lot, including the frontage, as pre-existing non-conforming, which is not under review in this request.
- Clarified that the board is only considering the setback issue in this case.

Sarah Alger

- Represents the owners of the neighboring property and expressed opposition to the garage being moved, preferring that it remain in its current location, whether reconstructed or renovated.
- Stated that if the board grants the relief, it should be conditioned on no change in the use of the structure, as any change in use of a pre-existing non-conforming structure requires a special permit under 1333a.
- Suggested that if the applicant wants to change the use, a separate application should be submitted, allowing neighbors to voice their concerns.

Williams

- Clarified that the structure is a studio-style garage with no change to the footprint or height, countering the claim that the structure is expanding.
- Mentioned that the only alteration is the addition of a dormer in the back to accommodate a door, as the current roof is too low.
- Stated that the HDC has already approved these exterior changes and the move, despite opposition.
- Noted that the request to move the garage back further for better driveway clearance was denied by the HDC, as was the request to increase the setback from the neighboring property at 124.

Kevin Toth

- Stated that the issues at hand are self-inflicted due to the way the property was divided, noting that it was fine as it was before the division.
- Mentioned that moving the structure back will cause it to elevate due to the grade, which is a significant change.
- Requested a copy of the inspection report for transparency, noting that it was just received today.
- Questioned what maintenance, if any, has been done on the property since it was purchased, pointing out that the shed has fallen into disrepair.

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	Alger - Argued that changing the use of the structure from a garage to a garage studio, potentially used for recreational activities, would be significantly more detrimental to the neighborhood than keeping it as a garage, especially given its proximity to the property line. - Expressed concern about the increased noise, foot traffic, and activity that would come with the change. - Suggested that if the board approves the application, the use should remain as a garage. - Encouraged the board to take a closer look at the overall situation, noting that while it might not be entirely within their purview, the issues are substantial.
Board Comments:	Brescher Left the meeting at 3:00pm McCarthy - Expressed opposition to changing the use of the garage to a studio, stating that it would increase the intensity of use and that such a decision is being made without a full understanding of how the rest of the lot will be used. - Clarified that while the move of the garage and the setback change might not require additional information, deciding on a change of use does, as the overall use of the lot and its other structures should be considered.
Motion:	Moved to continue the discussion to August 15, 2024. (made by: Allen) (seconded by: Marcklinger)
Vote:	Carried 5-0 / / McCarthy, Allen, Brescher, Marcklinger, Mondani (aye)

22-24 **51 Washington Avenue & 281 Madaket Road** **Williams**

The Applicant is seeking a modification of the Special Permit granted in ZBA File No. 09-24 pursuant to Nantucket Zoning By-law Sections 139-30 and 139-2 to validate an updated site plan, which will reduce the size of the previously approved residential swimming pool and relocate it on the site. 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 the Owner's Titles are registered as Certificates of Title Nos. 16,490 and 29,300 at the Nantucket County District of Land Court. The site is zoned Village Residential (VR).

Voting:	McCarthy, Allen, O'Mara, Marcklinger, Mondani
Alternates:	-
Documentation:	File with associated plans, photos, correspondence and required documentation
Representing:	Linda Williams
Discussion:	-
Public Comment:	There was no public comment.
Motion:	Moved to approve. (made by: Allen) (seconded by: Marcklinger)
Vote:	Carried 5-0 / / McCarthy, Allen, O'Mara, Marcklinger, Mondani (aye)

I. OTHER

ZBA regular meeting, Thursday, July 17, 2024, at 1 PM in person and via Zoom

II. ADJOURNMENT

Motion:	Motion to adjourn. (made by: Allen) (seconded by: Brescher)
Vote:	Carried 5-0 / / McCarthy, Allen, Brescher, Marcklinger, Mondani (aye)

Submitted by: Elaina Cano

Sources used: <https://www.youtube.com/watch?v=8TdfoPr3efM&t=8590s>