



Planning and Land Use Services

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

Date: 02/13/2025

To: Zoning Board of Appeals

From: Billy Saad
Zoning Administrator

RE: Staff Report for 02-13-25 ZBA Meeting

I. CALL TO ORDER:

II. APPROVAL OF THE AGENDA:

III. PUBLIC COMMENT *for items not listed on the agenda:*

IV. APPROVAL OF THE MINUTES:

- DECEMBER 12, 2024
- JANUARY 09, 2025

V. OLD BUSINESS

**2024-0008, Stephen J. and Holly J. Visco
Heyer**

59 South Shore Road

The Applicants are appealing a determination by the Building Commissioner that the use of 59 South Shore Road as an event space 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 event space/and or commercial use. The locus is situated at 59 S. Shore Road and shown on Assessor's Map 80 as Parcel 308 and as Lot 6 on Plan File No. 53-J. Evidence of owner's title is recorded in Book 1784, Page 303 with the Nantucket County Registry of Deeds. The site is zoned Limited Use General-2 (LUG-2).

STAFF recommends that the Board carefully review the materials submitted by the Appellant.

Building Commissioner Murphy will be present at the hearing. The Applicant's zoning enforcement request

can be found on **Pages 54-68 of the Packet**. Building Commissioner Murphy's response letter can be found on **Page 52 of the Packet**. Letters in support of the appeal can be found on **Pages 71-88**.

The relevant sections of the By-law are:

§ 139-29.E(1)

(1) The Board of Appeals shall have the following powers:

[...]

(b) To hear and decide appeals from decisions of the Building Inspector.

§ 139-31.A(1)AN APPEAL TO THE BOARD OF APPEALS (OR TO THE ZONING ADMINISTRATOR IF AUTHORIZED TO HEAR SUCH APPEAL) MAY BE TAKEN:

By any person aggrieved by reason of his inability to obtain a permit or enforcement action from the Building Commissioner [see § 139-25B(1) above], the Zoning Enforcement Officer, or from any other administrative officer under the provisions of this chapter; or

139-31.E (3). Action by the Board of Appeals

The concurring vote of at least four members of the Board of Appeals shall be necessary to reverse any order or decision of any administrative official under this chapter.

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

**12-24 South Siasconset Neighborhood Association, LLC 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, to decline the request for enforcement of the purported expansion of a preexisting nonconforming use. 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).

STAFF recommends that the Board carefully review the materials submitted by the Appellant.

Building Commissioner Murphy will be present at the hearing. The Applicant's zoning enforcement request can be found on *Page 11 of the Packet*. Building Commissioner Murphy's response letter can be found on *Page 10 of the Packet*.

The relevant sections of the By-law are:

§ 139-29.E(1)

(1) The Board of Appeals shall have the following powers:

[...]

(b) To hear and decide appeals from decisions of the Building Inspector.

§ 139-31.A(1)AN APPEAL TO THE BOARD OF APPEALS (OR TO THE ZONING ADMINISTRATOR IF AUTHORIZED TO HEAR SUCH APPEAL) MAY BE TAKEN:

By any person aggrieved by reason of his inability to obtain a permit or enforcement action from the Building Commissioner [see § 139-25B(1) above], the Zoning Enforcement Officer, or from any other administrative officer under the provisions of this chapter; or

139-31.E (3). Action by the Board of Appeals

The concurring vote of at least four members of the Board of Appeals shall be necessary to reverse any order or decision of any administrative official under this chapter.

2024-0006, Fourteen Tautemo Way Realty Trust Beaudette

14 Tautemo Way

The Applicant is requesting relief by Special Permit pursuant to Zoning Bylaw Sections 139-2, 139-7A, and 139-30 to install a Residential Recreational Outdoor Water Feature (Large swimming pool). Locus is situated at 14 Tautemo Way and shown on Assessor's Map 83 as Parcel 13 and as Lot 19 on Land Court Plan 13629-E. Evidence of Owner's title is registered as Certificate of Title 29719 on file with the Nantucket Registry District of Land Court. The site is zoned Village Residential (VR).

The Applicant is proposing a Large Swimming Pool (12' x 22") and has provided a detailed description of the proposed work, included in your packet, and the proposed site plan is on **Page ?? of the Packet**.

Large swimming pools are permitted by special permit in the VR district subject to the following standards listed in Zoning Bylaw § 139-2A (Definitions):

RESIDENTIAL RECREATIONAL OUTDOOR WATER FEATURE

[Added 5-6-2023 ATM by Art. 39, AG approval 9-8-2023]

(1) A structure designed to be used for recreational purposes, either above or below grade, containing water more than 24 inches in depth. This shall not include ornamental ponds, decorative water features, including, but not limited to, fountains, bird baths, and the like. The residential recreational outdoor water feature 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.

(2) Three types of residential recreational outdoor water features may be permitted:

(a) Hot tub/spa: a structure containing less than 100 square feet of surface area designed to be heated and containing seats/benches and jets.

(b) Small swimming pool: a structure containing 150 square feet or less of surface area. May be designed to be heated and may contain seat/benches, jets, or other features, but not including a diving board, slide, or the like.

(c) Large swimming pool: a structure containing more than 150 square feet of surface area. May include any feature, including a built-in hot tub/spa.

(3) 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 small or large swimming pool 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, §139-30.A (Special Permits)

- (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 and recommends the following findings and conditions:

Findings:

- 1) That the pool use and associated mechanicals are in harmony with the general purpose and intent of the Zoning By-law and provided that the project meets the following criteria:
 - a. The lot must meet the minimum lot size for the district; and
 - b. Side and rear yard setbacks of twenty (20) feet shall apply to the residential swimming pool and associated mechanical equipment.

The Board further finds that the modified proposal has met the standards as stated in the By-law for the following reasons: the combined lots contain 21,930 SF of area, in excess of the minimum required of 20,000 SF; and the pool and associated pool equipment will be sited in excess of 20 feet from any lot line.

Conditions:

- a. All chemical treatments of the pool shall stop three weeks prior to any draining or discharging of the pool. 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 pool 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 & Landscape Improvements", 14 Tautemo Way, Nantucket, MA, prepared by RJ O'Connell & Associates, Inc., dated November 20, 2024, 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 the Certificate of Appropriateness, 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

Applicants are appealing the Building Commissioner's December 3, 2024, determination letter pursuant to Zoning Bylaw Section 139-31A-(1) and Massachusetts General Laws Chapter 40A, Sections 8 and 15. The Building Commissioner determined that use of the Property for short-term rentals ("STR") does not violate Nantucket's Zoning Bylaw. Locus subject to the appeal is situated at 32 Monomoy Road, shown on Assessor's Map 54 as Parcel 242 and upon Land Court Plan 14974-C. Evidence of owner's title is registered on Certificate of Title No. 25823 with the Nantucket County District of the Land Court. The site is zoned Limited Use General 1 (LUG-1).

STAFF recommends that the Board carefully review the materials submitted by the Appellant.

Building Commissioner Murphy will be present at the hearing. The Applicant's zoning enforcement request can be found on **Pages 28-31 of the Packet**. Building Commissioner Murphy's response letter can be found on **Page 33 of the Packet**.

The relevant sections of the By-law are:

§ 139-29.E(1)

(1) The Board of Appeals shall have the following powers:

[...]

(b) To hear and decide appeals from decisions of the Building Inspector.

§ 139-31.A(1)AN APPEAL TO THE BOARD OF APPEALS (OR TO THE ZONING ADMINISTRATOR IF AUTHORIZED TO HEAR SUCH APPEAL) MAY BE TAKEN:

By any person aggrieved by reason of his inability to obtain a permit or enforcement action from the Building Commissioner [see § 139-25B(1) above], the Zoning Enforcement Officer, or from any other administrative officer under the provisions of this chapter; or

139-31.E (3). Action by the Board of Appeals

The concurring vote of at least four members of the Board of Appeals shall be necessary to reverse any order or decision of any administrative official under this chapter.

Applicant is requesting relief by Special Permit pursuant to Zoning Bylaw Sections 139-30 and 139-33A(1)(a) to alter and extend a pre-existing, nonconforming dwelling structure that does not meet side setback requirements, without increasing the nonconformity, and/or to obtain a special permit pursuant to §139-16.C(1) to reduce the side setback in an SR-20 zoning district from 10 feet to 5 feet. Locus is situated at 9 Towaddy Lane and shown on Assessor's Map 49.3.2 as Parcel 14.4. Evidence of owner's title is recorded in Book 644, Page 31 with the Nantucket County Registry of Deeds. The site is zoned Sconset Residential 20 (SR-20).

Proposal:

The Applicant seeks relief by Special Permit pursuant to Nantucket Zoning By-law (the "By-law") §139-30 and 139-33.A(1)(a) to alter and extend a pre-existing, nonconforming structure, which is nonconforming as to side setback, without increasing the nonconformity. Alternatively, the Applicant requests relief under §§139-16.C(1) and 139-30 to reduce the required side setback from 10 feet to 5 feet. The property is a pre-existing, nonconforming lot with an area of approximately 6,000 square feet, where

20,000 square feet is required. The lot has frontage of 50 feet on Towaddy Lane, where 75 feet is required.

Existing Conditions:

The site is nonconforming as to lot area, frontage, and side setback. The existing single-family dwelling encroaches into the required side setback by 4.8 feet, and the lot does not meet the minimum required area or frontage for the SR-20 zoning district.

Relief Requested:

The Applicant seeks relief under §139-30 and §§139-33.A.(1) & (4) to alter and extend the pre-existing, nonconforming structure while maintaining the current side setback of 5.2 feet.

Applicable Zoning Bylaw Provisions:

- *Section 139-30 (Special Permits): Allows for the extension, alteration, or reconstruction of pre-existing, nonconforming structures provided such changes are not substantially more detrimental to the neighborhood than the existing conditions.*
- *Section 139-33.A.(1) & (4) (Nonconforming Structures): Permits the alteration or extension of nonconforming structures by special permit, provided the alterations do not increase the nonconformity and meet the required conditions for reconstruction.*
- *Section 139-16C (1) Notwithstanding the provisions of § 139-16C(4), the Board of Appeals may grant a special permit to reduce the ten-foot side yard setback in R-5 and the ten-foot side and rear yard setback in R-10, R-20 and SR-20 to five feet.
[Amended 4-3-2018 ATM by Art. 45; AG approval 7-18-2018; 4-1-2019 ATM by Art. 49, AG approval 8-6-2019]*

Staff Analysis:

Staff notes that the Applicant's request as proposed, meets the requirements for Special Permit approval under Section §139-33 as the nonconformity is not being made worse.

The proposal to alter and extend portions of the preexisting nonconforming dwelling maintains the existing side setback nonconformity without increasing it, technically, both side yard setbacks will be improved by increasing the setbacks on both the north and south sides to approximately 6.4 feet. Additionally, the project complies with all other dimensional requirements of the SR-20 zoning district, including ground cover and height. Two abutters' letters in support of the Applicant's proposal are included in the Packet.

Staff supports the Applicant's request and recommends approval, subject to the findings and conditions outlined below, should the Board be inclined to grant the Special Permit.

Findings:

1. The alterations and extension to the existing dwelling structure are not substantially more detrimental to the neighborhood than the existing nonconforming structure, and the requested relief may be granted.

Conditions:

1. The proposed alterations and extension shall be in substantial compliance with the site plan submitted by the

Applicant, attached hereto as “Exhibit A.”

2. The project shall be completed in substantial conformity with the plans approved in connection with the Historic District Commission (HDC) Certificate of Appropriateness.
3. There shall be no further alterations or expansions of the structure without additional relief from this Board.
 4. Any damage to Towaddy Lane caused by construction activities shall be repaired and restored to its original condition or better prior to the issuance of a Certificate of Occupancy.

2025-0011, Whitney H. Matthews

43 Union St

Reade

Applicant is requesting relief by Special Permit pursuant to Zoning Bylaw Sections 139-30 and 139-33A(1)(a) to alter the pre-existing, nonconforming single-family dwelling by constructing upward additions within the footprint of the existing dwelling, partially within the nonconforming setback areas and without increasing any nonconforming setback distance. Locus is situated at 43 Union Street and shown on Assessor’s Map 42.3.2 as Parcel 29. Evidence of owner’s title is recorded in Book 1343, Page 286 with the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).

Proposal

The Applicant requests relief by Special Permit pursuant to Nantucket Zoning Bylaw §§139-30 and 139-33A(1)(a) to alter and expand a pre-existing, nonconforming single-family dwelling. The proposed project involves constructing upward additions within the footprint of the existing structure, partially within the nonconforming side and rear setback areas, without increasing any existing nonconformity. The property is located at 43 Union Street and is shown on Assessor’s Map 42.3.2 as Parcel 29. Evidence of the owner’s title is recorded in Book 1343, Page 286 with the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).

Existing Conditions

The locus is a pre-existing, nonconforming lot with the following nonconformities:

- **Lot Area:** Approximately 1,708 square feet (minimum required: 5,000 square feet).
- **Side Yard Setbacks:**
 - Northerly setback: 2.11 feet (minimum required: 5 feet).
 - Southerly setback: 1.51 feet (minimum required: 5 feet).
- **Ground Cover Ratio:** 52.7% (maximum permitted: 40%).

All nonconformities are protected as validly nonconforming under the provisions of the Nantucket Zoning Bylaw.

The proposed alterations have been approved by the Nantucket Historic District Commission (HDC) under Certificate of Appropriateness No. 2024-03-10147.

Applicable Zoning Bylaw Provisions

- **Section 139-30 (Special Permits):** Permits the alteration, extension, or reconstruction of pre-existing, nonconforming structures, provided the changes are not substantially more detrimental to the neighborhood.
- **Section 139-33A(1)(a):** Allows for vertical extensions within the existing nonconforming footprint, provided no increase to the nonconforming setbacks occurs.

The Applicant has submitted a request for a Special Permit to modify a pre-existing, nonconforming single-family dwelling by constructing upward additions within the existing footprint. The proposal does not extend further into the nonconforming setback areas. **Staff has checked with the applicant’s agent, who confirmed that no excavation will take place.**

The structure remains nonconforming with respect to side yard setbacks, with a northerly setback of approximately 2.11 feet and a southerly setback of approximately 1.51 feet, both less than the required five (5) feet in the ROH district. The lot contains approximately 1,708 square feet of area—well below the 5,000-square-foot minimum—and was created through an "81L subdivision." Additionally, the property exceeds the district's maximum permitted ground cover ratio of 40%, currently at 52.7%. However, all these nonconformities are legally protected under the Nantucket Zoning By-Law.

The Nantucket Historic District Commission has issued a Certificate of Appropriateness (No. 2024-03-10147) for the proposed design.

If the Board is inclined to approve the application, it must determine that “such extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure and/or use to the neighborhood,” that “the nonconforming setback distance is not made more nonconforming,” and that “the extension will not be substantially more detrimental to the neighborhood than the existing nonconformity.”

Letters opposing the project from abutters are included in the Packet. However, no evidence has been provided demonstrating that the proposed alterations would be substantially more detrimental to the neighborhood than the existing nonconformity.

Findings

1. The proposed alterations do not increase any existing nonconformities or create new nonconformities.
2. The project is consistent with the character of the ROH zoning district and is not substantially more detrimental to the neighborhood than the existing conditions.
3. The project complies with the provisions of §139-33A(1)(a) and 139-30 of the Nantucket Zoning Bylaw.

Conditions

1. The proposed alterations shall be in substantial compliance with the site plan submitted by the Applicant, attached hereto as “Exhibit A.”
2. The project shall conform to the plans approved by the Historic District Commission (HDC).
3. There shall be no further alterations or expansions of the structure without additional relief from this Board.
4. Construction activities shall not cause damage to Union Street, and any damage caused shall be repaired and restored to its original condition or better prior to the issuance of a Certificate of Occupancy.

VII. OTHER (VOTES MAY BE TAKEN)

VIII. ADJOURNMENT (VOTE WILL BE TAKEN)
