



Planning and Land Use Services

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

Date: 03/13/2025

To: Zoning Board of Appeals

From: Nicky Sheriff
Land Use Specialist/HDC Inspector

RE: Staff Report for 03-13-25 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 18, 2024
 - MARCH 13, 2025
-

V. OLD BUSINESS

2025-0011, Whitney H. Matthews

43 Union Street

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).

FROM THE FEBRUARY 13 STAFF REPORT:

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.”

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.

Update:

The matter was opened on February 13, 2025, where Attorney Reade provided an overview of the application on behalf of Whitney Matthews, the property owner at 43 Union Street. Concerns were raised by abutters about protecting a historic town-owned elm tree on the adjacent property (43A Union Street), prompting a proposed condition to prevent soil disturbance, material storage, or equipment passage near the tree. Additional issues included potential neighborhood impacts related to lot measurements, density, traffic disruption, and effects on airflow and light. The hearing was continued to March 13, 2025, to allow the Tree Advisory Committee and town arborist to review the project and provide recommendations, with potential additional conditions to address tree protection and construction logistics.

There are several letters in the packet (Pages 26-43), from direct abutters and the Tree Advisory Council expressing their concerns about the matter.

2024-0009, Jeff McDermott, Et Al 32 Monomoy Road Pickering-Cook/Gagalis
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).

FROM THE FEBRUARY 13 STAFF REPORT:

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.

Update:

The matter was opened on February 13, 2025, and Attorney Kristen Gagalis, representing several abutters of 32 Monomoy Road, provided an update on the appeal of the Building Commissioner's December 3rd, 2024, decision denying zoning enforcement for the property. Ms. Gagalis, representing Jeff McDermott of 38 Monomoy Road, Matthew Westfall of 30 Monomoy Road, Steven Ketchum of 34 Monomoy Road, Bob and Deborah Landreth of 4 Berkeley Avenue, and Mark Wilmont of 33 and 35 Monomoy Road, argued that the use of the property, a six-bedroom, five-and-a-half-bath house in the LUG-1 district owned by Copley Monomoy LLC since 2015, as an exclusive short-term rental violates Nantucket zoning bylaws. She cited the March 2024 Ward v. Town of Nantucket decision, which ruled that short-term rentals cannot be the primary use of residential properties, emphasizing that the property's sole use as a short-term rental is prohibited in a residential zone. Ms. Gagalis noted that Copley Monomoy LLC had admitted during litigation that no one had resided at the property since 2015 and that it is rented year-round. She also referenced previous appeals, including the October 2022 request for zoning enforcement, which had been denied in January 2023.

Mr. Jeff McDermott, one of the appellants, also shared his concerns, noting that the property has been used exclusively for short-term rentals, causing disturbances such as noise complaints and garbage issues. He emphasized that the property's primary and sole use as a short-term rental contradicts Nantucket's zoning bylaws, which do not permit such use in residential zones, and requested the Board to overturn the Commissioner's decision and enforce the zoning regulations.

The Board continued the matter to March 13, 2025, to seek advice from Town Counsel and to provide the appellee with an opportunity to respond, as they were not present at the February 13, 2025, hearing.

Please be advised that a formal notice has been filed regarding the entry of the appearance of Robert E. McLaughlin, Sr. and the law firm of Gilman, McLaughlin & Hanrahan LLP as attorneys for Copley Monomoy LLC. A copy of the formal notice can be found on **page 56 of the packet** for your reference.

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

2024-0006, Fourteen Tautemo Way Realty Trust

14 Tautemo Way

Beaudette

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 *Pages 10-14 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.

Standard ZBA 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****

2025-0013 Laura Nicholson

4 Macy Road

Williams

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 4 Macy Road and shown on Assessor’s Map 60 as Parcel 105 and as Lot 264 on Land Court Plan 3092-18 Evidence of Owner’s title is registered as Certificate of Title 26724 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 (11’ x 30”) and has provided a detailed description of the proposed work, included in your packet, and the proposed site plan is on **Page 13 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 22,667 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.

Standard ZBA 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, "Proposed Pool Plot Plan", 4 Macy Rd, Nantucket, MA, prepared by Joseph Marcklinger P.L.S., dated February 07, 2025, 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

VII. OTHER (VOTES MAY BE TAKEN)

VIII. ADJOURNMENT (VOTE WILL BE TAKEN)
