



ZONING BOARD OF APPEALS

2 Fairgrounds Road
Nantucket,
Massachusetts 02554
www.nantucket-ma.gov

Commissioners: Susan McCarthy (Chair), Elisa Allen (Clerk), John Brescher, Joe Marcklinger, Lisa Botticelli
Alternates: Mark Poor, Jim Mondani

~~ MINUTES ~~

Thursday, March 13, 2025

This meeting was held via remote participation using ZOOM and YouTube.

I. CALL TO ORDER

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

Attending Members: McCarthy, Allen, Botticelli, Brescher Marcklinger, Mondani

Staff in attendance: William Saad, Zoning Administrator & Land Use Specialist, Rodlisha Dixon, Administrative Specialist

Absent:

Remote Members: -

Late Arrivals: Mondani @ 1:06 PM

Early Departures: -

II. APPROVAL OF AGENDA

Motion: Motion to approve the agenda.

(made by: Brescher) (seconded by: Allen)

Vote: Carried 5-0 McCarthy, Allen, Brescher, Botticelli, Marcklinger (Aye)

III. PUBLIC COMMENT

IV. APPROVAL OF THE MINUTES

• DECEMBER 18, 2024

• JANUARY 13, 2025

Motion:	Motion to continue. (Made by: Allen) (Seconded by: Botticelli)
Vote:	Carried 5-0// McCarthy, Allen, Brescher, Botticelli, Marcklinger

V. NEW BUSINESS

1. 2025-0013 Laura Nicholson

4 Macy Rd

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).

Voting:	McCarthy, Brescher, Allen, Botticelli, Mondani
Documentation:	File with associated plans, photos, correspondence and required documentation
Representing:	Linda Williams
Discussion:	

ZBA Minutes – March 13, 2025

	Williams - Presented the proposed swimming pool and associated equipment. The Board - Asked whether proposals of this nature could be handled administratively, given that the requirements are straightforward and the Board has consistently approved them when those requirements are met. Saad - Noted that the Board has a strong history of approving similar applications; however, when concerns are raised by abutters, the Board typically works with the Applicant during the Public Hearing process to address and mitigate those concerns. The Board - Discussed past practice and ultimately agreed that the current process appropriately allows for abutter input.
Motion:	Motion to close the public hearing. (Made by: Brescher) (Seconded by: Allen)
Vote:	Carried 5-0// McCarthy, Brescher, Allen, Botticelli, Mondani (Aye)
Motion:	Motion to approve with the findings and conditions listed in the staff report. (Made by: Brescher) (Seconded by: Allen)
Vote:	Carried 5-0// McCarthy, Brescher, Allen, Botticelli, Mondani (Aye)

12024-0006, 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).

Voting:	McCarthy, Brescher, Allen, Botticelli, Marcklinger
Documentation:	File with associated plans, photos, correspondence and required documentation
Representing:	Attorney Rick Beaudette
Discussion:	Beaudette - Presented the proposed swimming pool and associated equipment. Botticelli - Asked if any grading changes are proposed and questioned the location of the shed, currently shown on the plan over a walking path McCarthy - Questioned where the pool equipment pad is located. Beaudette - Confirmed no grade change is proposed - Confirmed location of the pad, which was slightly relocated due to environmental constraints of the site. - Clarified that the walking path is not a formal easement but has been historically used by neighborhood residents. Stated that he informed neighbors of the intention to reestablish a path along the unnamed way abutting the property, pending approval from the Conservation Commission.

	Attorney Sarah Alger, representing the owner of 12 Tautemo - Noted concern that the plan does not include sufficient dimensional information to confirm the pool's location relative to setback requirements. - Stated that the primary concerns are screening, noise, and ensuring that construction is carried out in compliance with regulations. The Board - Agreed that an updated plan should be submitted depicting the pool dimensions in relation to the setbacks as well as the location of the proposed fence. - Confirmed that all standard conditions for a VR Pool Special Permit will be included in the decision. - Discussed the need for screening along the abutting way to buffer the property. Saad - Noted that he was seeking direction from the Board, as the applicant had not yet received HDC approval, and emphasized that the standard conditions of approval require compliance with the HDC-approved site plan. The Board - Discussed if a continuance was appropriate but decided that a change in the site plan would require a modification from the Board regardless and requested the Applicant to provide a copy of the Approval to staff prior to obtaining a building permit.
Motion:	Motion to close the public hearing. (Made by: Brescher) (Seconded by: Botticelli)
Vote:	Carried 5-0// McCarthy, Brescher, Allen, Botticelli, Marcklinger (Aye)
Motion:	Motion to grant the requested relief with the findings and conditions outlined in the staff report, subject to the Applicant providing an updated Exhibit A depicting the pool dimensions in relation to the setbacks and the proposed fence, and submitting a copy of the HDC-approved site plan to staff prior to issuance of a building permit. (Made by: Allen) (Seconded by: Brescher)
Vote:	Carried 5-0// McCarthy, Brescher, Allen, Botticelli, Marcklinger (Aye)

1. 2025-0014 George & Tiffany Cloutier

40 Low Beach Road

Williams

CONTINUED TO APRIL 10, 2025

The Applicant is requesting Variance relief pursuant to Zoning Bylaw Section 139-32.A from the provisions of Section 139-16.A (Intensity regulations – groundcover). Applicant is seeking approval to combine the lot square footage of her three (3) lots in order to calculate usable groundcover for the lot that contains the dwelling. The lots are now separated by paper roads taken by the Town and not yet conveyed to the Applicant as originally intended. Locus is situated at 40 Low Beach Road and shown on Assessor's Map 74 as Parcel 56 (house lot, and Parcels 57 & 58), and as Lot 7 (23, and 34) in Plan Book 3, Page 3 and Plan Book 7, Page 14. Evidence of owner's title is recorded in Book 553, Page 129 with the Nantucket County Registry of Deeds. The site is zoned Limited Use General 3 (LUG-3).

Voting:	McCarthy, Marcklinger, Botticelli, Allen, Brescher
Documentation:	File with associated plans, photos, correspondence and required documentation
Representing:	-
Discussion:	-
Motion:	Motion to continue both applications to April 10, 2025. (Made by: Botticelli) (Seconded by: Allen)
Vote:	Carried 5-0// McCarthy, Marcklinger, Botticelli, Allen, Brescher (Aye)

2. 2025-0011 Whitney H. Matthews

43 Union St

Reade

CONTINUED TO APRIL 10, 2025

Applicant is requesting relief by Special Permit pursuant to Zoning Bylaw Sections 139-30 and 13933A(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

ZBA Minutes – March 13, 2025

1343, Page 286 with the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).

Voting:	McCarthy, Marcklinger, Botticelli, Allen, Brescher
Documentation:	File with associated plans, photos, correspondence and required documentation
Representing:	-
Discussion:	-
Motion:	Motion to continue both applications to April 10, 2025. (Made by: Botticelli) (Seconded by: Allen)
Vote:	Carried 5-0// McCarthy, Marcklinger, Botticelli, Allen, Brescher (Aye)

3. 2024-0009, Jeff McDermott, Et Al

32 Monomoy Rd

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).

Voting:	McCarthy, Allen, Botticelli, Marcklinger, Mondani
Documentation:	File with associated plans, photos, correspondence and required documentation
Representing the Appellant:	Attorney Kristen Gagalis
Representing the Appellee:	Attorney Robert McGlaughlin
Remote Attendance:	Attorney George Pucci, Town Counsel
Additional Town Staff:	Paul Murphy, Building Commissioner

Discussion:	Attorney Kristen Gagalis - Presented the application and summarized her prior presentation. - Noted the property is owned by The Copley Group and differs from prior STR hearings. - Stated the property's primary use is STR and cannot be classified as an accessory use. - Requested the Board overturn the decision of the Building Commissioner. Attorney Robert McGlaughlin - Stated the property is for sale, has not been rented for several months, and will not be rented in the future. - Noted that an offer to formalize this in a contract with the appellant was not accepted. - Questioned the motives of the Appellants. - Highlighted the pending Land Court case and that the Ward case is non-binding. - Stated that the only way to determine whether his client's use is subordinate would be to count the number of days the property is rented, emphasizing that it is currently not rented at all. - Questioned the standing of the appellants, noting that the parties named in the appeal also engage in short-term rentals of their own properties. - Suggested an extension to allow the courts to resolve pending matters. McCarthy - Confirmed the property is for sale and not currently rented. - Noted it may be premature to act with the Land Court case pending. - Asked for guidance on handling the pending Land Court matter. Attorney George Pucci - Clarified he is present to answer questions specific to the Board's matter. - Provided updates on the Ward case and McDermott v. Nantucket ZBA, noting the case is stayed but
-------------	---

the Board must hear the appeal on substantive grounds.

- Stressed the Board should base its decision on matters of zoning.
- Confirmed the Building Commissioner declined a zoning enforcement request.

The Board

- Discussed whether the property could be considered an accessory use.
- Questioned timing of the appeal relative to prior ZBA hearings.
- Requested to hear the position of the Building Commissioner.

Paul Murphy

- Declined enforcement, clarifying his position that STRs are permitted in all zoning districts absent a bylaw.

The Board

- Questioned the bylaw regarding corporate ownership.

Saad

- Noted the bylaw is under Section 123 of the Town Code, enforced by the Board of Health or police.

The Board

- Agreed that the Board will need to rule on a matter of zoning, discussed the prior use, and that the property is not being used in that manner currently, but also could be used for rentals.
- Discussed if this matter is moot.

Gagalis

- Stated the property was listed for sale after the failed Annual Town Meeting vote, but was available for summer 2024 rentals.

McGlaughlin

- Stated his client honored previously booked rentals and has not rented since.

Mondani

- Questioned the vacant days of the property. Doesn't believe vacant days can be discounted and that accessory has not been clearly defined.

Marcklinger

- Thinks the Board should overturn the Building Commissioner to deter future rentals.

Botticelli

- Believes commercial entities are not allowed in residential areas.

Mondani

- Doesn't believe the Board can overturn the Building Commissioner based on the lack of zoning regulations.

Allen

- Believes this is a slippery slope absent regulations.

McCarthy

- Agrees with Jim, that accessory has not been clearly defined, and doesn't feel there's enough information to overturn the Building Commissioner.

Caroline Baltzer (public comment)

- Stated that they sponsored the bylaw amendment identified by the judge, clarified that the property is owned by the Levinson family rather than a corporation, and characterized the situation as community bullying. They noted the property is for sale, referenced the long history of seasonal rentals across the island, emphasized that Nantucket neighborhoods predate its resort status (citing Monomoy as a seasonal summer neighborhood), and stressed the importance of accurate historical context.

	The Board -Deliberated on whether the matter had become moot. Pucci -Explained the various actions available to the Board with respect to denying the appeal as moot.. Virginia Vidoni (public comment) -Expressed concern that allowing the request could set a precedent leading to lawsuits, surveillance among neighbors, and community discord. She noted that many families on Nantucket own multiple properties, often renting one while living in another, and cautioned that the decision could open the door to unsavory behavior. Caroline Baltzer (public comment) - stressed that historic summer rental cottages are part of Nantucket’s heritage, expressed concern over their loss to redevelopment, and urged the Board to recognize their importance as the primary source of island accommodations. Gagalis -Clarified that the key issue is whether the use is subordinate, noting there is no primary use for it to be subordinate to, and that historical use is not central to this case. Kathy Baird (public comment) -stated they checked The Copley Group’s website and found the property’s rental dates blocked, indicating it is not currently available to rent.
Motion:	Motion to close the public hearing. (Made by: Botticelli) (Seconded by: Allen)
Vote:	Carried 5-0 // McCarthy, Allen, Botticelli, Marcklinger, Mondani
Board Discussion:	The Board -Discussed the options before them and to make a ruling to overturn the building commissioner, or for the Board to deny the appeal based on the matter being moot. The Board was split on this matter, with 2 in favor of overturning the building commissioner, and 3 in favor of denying the appeal as the property is no longer for rent. Pucci - advised framing motions in the affirmative for clarity with supermajority requirements and noted the Board can take a separate vote to state its reasons if the motion fails.
Motion:	Motion to overturn the Building Commissioner’s determination to decline enforcement action. (Made by: Marcklinger) (Seconded by: Botticelli)
Vote:	Motion failed 2-2// Botticelli, Marcklinger (Aye), McCarthy, Mondani (Nay), Allen (abstained)
Board Discussion:	The Board -Discussed that a decision must be filed with clear reason for the denial.
Motion:	Motion to reconsider vote: (Made by Botticelli) (Seconded by: Mondani)
Vote:	Motion failed 2-3// Botticelli, Marcklinger (Aye), McCarthy, Allen, Mondani (Nay)
Board Discussion:	The Board -Discussed that the property is for sale and no longer being rented based on representation of counsel and therefore, considers the matter to be moot.
Motion:	Motion to uphold the Building Commissioner’s determination as the property is no longer for rent and the matter is moot. (Made by: Mondani) (Seconded by: Botticelli)
Vote:	Carried 4-1 // McCarthy, Allen, Botticelli, Mondani (Aye), Marcklinger (Nay)

Submitted by: Billy Saad

YouTube Link: <https://www.youtube.com/watch?v=hIWRfwqqP7I>