Planning and Land Use Services

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

STAFF REPORT

PLEASE NOTE MEETING BEGINS AT 1:00PM

Date: **December 9, 2014**

To: **Zoning Board of Appeals**

From: **Eleanor W. Antonietti**
Zoning Administrator

Re: **December 11, 2014 Agenda**

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I. APPROVAL OF THE MINUTES:

- November 13, 2014

II. OLD BUSINESS:

- 46-14 L. Dennis Shapiro, Trustee of Dionis Realty Trust 73 Eel Point Road Reade
  WITHDRAWAL WITHOUT PREJUDICE *(Voting Members ET, SM, KK, MP, MA)*

- 53-14 Tack 3, LLC 26 Washington Street Reade
  Action deadline January 7, 2015 *(Voting Members MJO, LB, KK, SM, GT)*
  Applicant is requesting Variance relief pursuant to Zoning Bylaw Section 139-32 from the maximum height of thirty (30) feet pursuant to Section 139-17.A and Special Permit relief pursuant to Section 139-18.D to waive four (4) parking spaces where the proposed Duplex and retail uses require nine (9) spaces pursuant to the provisions of Section 139-18.B. Applicant proposes to alter the pre-existing non-conforming mixed-use structure by adding a second dwelling unit on a portion of the first floor, elevating the structure to meet building code requirements applied in coastal flood zones, and reconfiguring the on-site parking spaces. The Locus is situated at 26 Washington Street, is shown on Nantucket Tax Assessor's Map 42.3.2 as Parcel 23, and as Lot 3 on Land Court Plan 9434-F. Evidence of owner's title is registered as Certificate of Title No. 25266 in the Nantucket County District of the Land Court. The site is zoned Residential Commercial (RC) and is located in the Harbor Overlay District (HOD).

  FROM 10/9/14 STAFF REPORT:
  The existing mixed-use structure contains a 1st floor retail operation and a 2nd floor dwelling unit. A Duplex will be created by the addition of a dwelling unit on a portion of the 1st floor, which will also retain a retail use. The existing structure will be expanded in area by 413 SF and vertically from a height of 25.2 to 34.4

feet above mean grade. A new 440 SF two-story, two-car garage structure is shown on the Proposed Conditions Site Plan.

The existing structure is sited 4.9 feet from the northerly lot line. This side yard setback intrusion will be eliminated by the alteration. The 9.2 foot increase in height results from 1) raising the 1st floor elevation to put it in compliance with flood zone building code requirements, and 2) increasing the height of the 2nd floor dwelling. The first reason would meet the Variance standard for Soil Conditions and Topography. The Proposed Conditions Site Plan does not indicate if the locus will meet the 20% Open Space requirement, equivalent to approximately 1,651 SF of the entire lot area. The Existing Conditions Site Plan shows substantial brick hardscaping. Pursuant to Section 139-16.E regarding Open Area requirements, "brick sidewalks may be counted as open area up to a maximum of 10% of the lot or site." If applied, the applicant/owner could count up to 826 SF of brick sidewalk towards the 1,651 SF of required Open Space. The addition of a 2nd dwelling unit creating a Duplex is allowed by right in the RC district. The Applicant proposes 5 parking spaces where 9 are required to accommodate the mixed commercial and residential uses. 3 of these spaces will be partially sited on adjacent property currently owned by the Applicant/Owner. Applicant will need to provide some indication of how these spaces will be protected and run with the land if the adjacent lot is conveyed out of common ownership. It would appear to be physically impossible to provide any more than the 5 on-site spaces the applicant is proposing. Furthermore, the Town lot is within close walking distance.

This locus has been granted two prior Special Permits included in your packet. The 1992 SP (File No. 041-92) granted a parking waiver of 1 parking space where 5 were required. The 2000 SP requested a Modification of 041-92. The then owners proposed the addition of a two-car garage which would contain a 2nd dwelling on the 2nd floor. They were granted a waiver of 1 parking space and change of use from retail to office and addition of 2nd dwelling. These uses also required 5 spaces. The 2nd dwelling was never built and therefore the relief requested would be considered abandoned. It is not clear if the 1st floor retail space was converted into commercial office space which would have changed the parking calculations. At any rate, the physical and use alterations proposed herein require a *start-from-scratch* approach to the parking calculations.

UPDATE:

Applicant's attorney has submitted a letter and a revised Site Plan IN YOUR PACKET explaining modifications to the original proposal resulting from the concerns raised by the Board at the November 13th hearing. Specifically, the garage has been eliminated and the parking has been re-configured to provide 7 spaces, three of which are dimensionally noncompliant (9 x 17 where the bylaw requires 9 X 20). In addition, applicant specifies the commercial use of 965 square feet on the first floor to be for office space, rather than retail as formerly indicated. The proposed Duplex status will, in fact, not increase the number of bedrooms (4) as currently exist on the premises.

PARKING CHART

PROPOSED	REQUIRED	TOTAL
965 +/- SF of office space	1 for every 200 SF	**5**
DUPLEX	.75 per bedroom	**3**
		NEED 8 PROVIDING 7 ***Requesting waiver of 1***

The locus is sited within the Harbor Overlay District, which was established in 2008 at the instigation a group of citizens concerned with protecting existing water-dependent uses, among other things. (See Section 139-12.I of the Bylaw for full description of purpose and provisions of the HOD.) The Planning Board is the permit granting authority for all commercial uses requiring a special permit within the HOD. The applicant has limited the increase of ground cover attributable to residential use to 100 square feet; the rest is commercial which they are allowed to increase, provided that they provide a water-dependent feature, which they are doing by way of waterfront pedestrian access. They are not asking for any relief as to the HOD requirements. The parking requirements are changing by virtue of the expanded residential use.

Therefore, this relief may be granted under the authority of the ZBA. Applicant has previously provided an explanation regarding the increase in height to 34.4 feet. This triggers Variance criteria and therefore falls definitively within the purview of the ZBA. The parking relief would be granted pursuant to 139-18.D for both the waiver of 1 space of the dimensional requirements.

- 58-14 Mark D. Forsyth and Suzanne J. Forsyth 8 Gull Island Lane Stover
  Action deadline January 7, 2015 *(Voting Members* SM MJO MA MP GT)
  Applicant is requesting Modification of prior Special Permit relief pursuant to Nantucket Zoning Bylaw Section 139-33.A(1) to validate the inadvertent siting of a deck 4.85 feet from the westerly side yard lot line where a five (5) foot setback is required. In the alternative, Applicant requests relief by Variance pursuant to Section 139-32 from the side yard setback requirement in Section 139-16. The Locus is nonconforming as to lot size, having a lot area of 4,873 square feet in a zoning district that requires a minimum lot size of 5,000 square feet and is nonconforming as to frontage having 48.38 feet of frontage in a zoning district that requires 50 feet of frontage. The pre-existing nonconforming structure is sited approximately 1.9 feet from the easterly side yard lot line where a 5 foot side yard setback is required. The Locus is situated at 8 Gull Island Lane, is shown on Nantucket Tax Assessor's Map 42.4.3 as Parcel 95, as Lot A on Land Court Plan 13220-B. Evidence of owner's title is registered as Certificate of Title No. 25111 in the Nantucket County District of the Land Court. The site is zoned Residential Old Historic (ROH).

  FROM 10/9/14 STAFF REPORT:
  This relief should be granted as a Variance. The side yard setback encroachment, while unintentional, has created a new setback nonconformity as the pre-existing side yard setback intrusion was on the easterly side of the structure. According to the previous decision (File No. 080-12) requesting approval for "additions to the preexisting nonconforming structure that will be sited in compliance with all setbacks", the deck was shown on the Proposed Conditions Site Plan to be sited 5 feet from the westerly side yard lot line, whereas it ended up being as close as 4.85 feet from the side yard lot line - the difference being *de minimis*.
  The Board would have to find that, as stated in Section 139-32.A (Variances):
  […] *owing to circumstances relating to soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and the desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of such bylaw.*

  UPDATE:
  As requested at closing of October 9th hearing, all sitting Board Members made Site Visits to the premises. No new information has been provided.

- 61-14 Don Allen Auto Service, Inc. 10 Polpis Road Evens
  Action deadline February 11, 2015 (*Voting Members ET, LB, SM. MA, MP)*
  Applicant is requesting Modification of prior Special Permit relief, granted in three decisions, to allow for exterior display of sales vehicles as shown on a Revised Site Plan. The first two decisions (File No. 105-06, modified by File No. 03-12) granted relief for alteration and expansion of a pre-existing nonconforming commercial use to allow for the inspection, detailing, and sales of vehicles. The most recent modification (File No. 38-13) granted relief to reduce the open area requirements and to increase the driveway width. The Locus is situated at 10 Polpis Road, is shown on Assessor's Map 54 as Parcel 124, and as Lots 12 and 17 on Land Court Plan 10937-B. Evidence of owner's title is recorded at Certificate of Title No. 18875 on file at the Nantucket Registry District of the Land Court. The site is zoned Village Residential (VR).

  FROM 11/13/14 STAFF REPORT:
  See above description for relief requested. The Planning Board at its November 10th hearing strongly recommended approving this request. They specifically noted that the premises have undergone major improvements since being converted into its current operation and use. Staff recommends approval.

  UPDATE

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At the November 13th hearing,the BOARD recommended that applicant go back to Surveyor to create additional parking spaces elsewhere so he can use 3 spaces in front for Display Area. The applicant has submitted a revised site plan IN YOUR PACKET which shows an alternative parking and Display Area.

III. NEW BUSINESS:

- 40-14 Nantucket Island Resorts, LLC 20 Cherry Street Beaudette
  Action deadline February 11, 2015 *CONFLICTS*: MA KK
  Appellant brings an appeal of a "Notice of Zoning Code Violation and Order to Cease, Desist, and Abate" issued by the Zoning Enforcement Officer on May 5, 2014. The "Notice" asserted a violation of Section 139-33.A of the Zoning Bylaw with regard to the alteration of a pre-existing, nonconforming commercial use without the required special permit. In the alternative, Applicant requests modification of prior Special Permit pursuant to Section 139-33.A(1) to allow commercial storage on the premises by Nantucket Tents, the current Lessee. The Locus is situated at 20 Cherry Street, is shown on Nantucket Assessor's Map 55 as Parcel 378.5, is shown as Lots 2 and 3 on Land Court Plan 41107-A. Evidence of owner's title is recorded at Certificate of Title 18414 on file at the Nantucket County District of the Land Court and in Book 580, Page 138 on file with the Nantucket County Registry of Deeds. The property is zoned Residential 1 (R-1).

FROM 8/14/14 STAFF REPORT *continued and never opened* **:**

This locus was granted a Special Permit in 1980 (Decision No. 013-80 included in your packet) which granted relief specifically to allow for construction and "operation of a greenhouse to supply the needs of Sherburne Associates for its commercial enterprises" […and to] be used "for the private purposes of the owners". Staff consulted the Board of Appeals original filing included in your packet for the above referenced Decision which states, "Intended use is to discontinue stable and storage facilities uses and construct a greenhouse for private use." The permit made a determination that the proposed greenhouse operation would constitute a "private use". The property was owned by Ernest and Catherine Tripp at the time of the 1980 filing, but they conveyed to Sherburne Associates shortly after the hearing in June 1980. Sherburne, then Winthrop, and now Nantucket Island Resorts have owned the locus since 1980 and continuously operated a commercial activity purported to be a greenhouse for the "growing of plant material for Sherburne Associates use only" and with "storage of equipment, fertilizer, etc.", according to Building Permit No. 1688-80 referenced in the Addendum and included in packet issued to Sherburne Associates. A 2004 Building Permit application to "reconfigure existing area to make private offices" was filed but a Certificate of Occupancy was not issued for this.

There is a letter of complaint in your packet from a nearby abutter, addressed to Marcus Silverstein, enumerating various alleged violations of the use allowed in the 1980 Special Permit. It appears that the use of the site by Nantucket Tents has resulted in an change and/or intensification of use that led the ZEO to issue his Cease and Desist Order.

The alleged changes and/or intensification of use from greenhouse for private use to both commercial and storage uses may be examined according to the "Powers Test". The Powers Test is a 3-pronged method for both determining whether the use of property is protected as nonconforming and whether a change of use may be allowed. While the use of the locus for the commercial greenhouse, although not allowed in the R-1, is pre-existing non-conforming, an existing use will lose the protection afforded a non-conforming use for failure to satisfy even one of the following tests:

1. Does the use reflect the nature and purpose of the use prevailing when the zoning bylaw took effect?
   - The 1980 Special Permit contains language asserting a non-conforming use at the time of its issuance; "It is apparent that the present use of the property is a non-conforming use in a residential area in that various business activities have been conducted on the property for many years."
   - This property fronts on both Cherry and Bear Streets. It is on the border of an RC zone. However, the immediate neighborhood is R-1 and of a uniquely residential character.

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2. Is there a difference in the quality of character as well as the degree of use?
   - The use of the premises for operation of a greenhouse for private purposes of the owners, as proposed in the 1980 Special Permit, was more compatible with the prevailing residential nature of the surrounding area. The decision contained the following statement; "The greenhouse itself will be a 60' X 44' and will be sufficiently landscaped to enhance the neighborhood."
   - According to the abutter's letter to the ZEO, Nantucket Tent's operation has "exceeded" the use allowed in the 1980 decision and had a noticeable detrimental impact on the residential neighborhood. The abutter alleges that Nantucket Tents is violating the Special Permit's condition that no retail activity take place on site. He further claims that the greenhouse use was abandoned years ago. Pursuant to Section 139-33.C:
     - *Nonconforming uses and structures abandoned or not used for a period of three years shall not be reestablished.*
3. Is the current use different in kind in its effect on the neighborhood?
   - The prior commercial use as a greenhouse never resulted in any complaints from abutters.
   - According to the abutter's letter, the current Nantucket Tent operation has caused substantial traffic congestion, and generated significant amounts of trash, and noise. The prior approved use did not result in the same types of disturbances and did, in fact, have less impact on the area.

At its hearing on August 11th, the Planning Board reviewed the application and made the finding that this matter is a planning concern because it is at the edge of the MidIsland Planned Overlay District. They further recommended that the ZBA should apply the Powers Test to this matter.

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Staff recommends that the Board uphold the ZEO order and that the appellant file an application for a Special Permit for a Change of Use to reflect the existing use while keeping the pre-existing nonconforming status of the premises for commercial use. Staff further recommends that the Board require the owner to:

1. Clean up the site which is currently an eye-sore in an otherwise quiet residential neighborhood.
2. Fix-up the greenhouse as it is in visible need of repair.
3. Install fencing and screening
4. Enforce deliveries on in the interior of the lot as opposed to at street level.
5. Establish strict hours of operation.

UPDATE:

In September, Applicant requested to modify and re-notice this application for the October 9th hearing. The re-noticed amended application included the standing Appeal while retaining an alternative to request Special Permit relief in the event that the appeal is not sustained. Applicant's agent subsequently asked for a protracted continuance until February 2015. The reason given for this lengthy continuance was that the lease to Nantucket Tents will expire and the owner is not certain that the Lease will be renewed. If it were not renewed, the current use would no longer exist on the premises. However, the Applicant will need to specify what use will likely occur on the lots. At the October 9th hearing, Cliff Williams, owner of an abutting property, inquired as to why the applicant was allowed this protracted continuance. The Board determined that the applicant and/or agent should appear at the November 13th hearing to justify and explain the request.

NO NEW INFORMATION HAS BEEN PROVIDED since Applicant's attorney appeared at the November 13th hearing to explain request for lengthy continuance. The hearing was NOT officially opened at that time.

- 67-14 Giedrius Miksys & Kristina Ralkova, *et al* as Owners, and Nantucket Properties, LLC & Trade Wind Cottages Condominium, as Applicants *CONFLICTS*: NONE KNOWN
  CONTINUED TO January 22, 2015 40 & 42 Nobadeer Farm Road Beaudette
  Owners and Applicants are requesting an alteration to a pre-existing nonconforming use, currently governed by the Planning Board, pursuant to Zoning Bylaw Section 139-33.A(1)(a). Specifically, applicants seek to amend previously issued Multi-Family Special Permit in Planning Board File #21-05 by releasing the

restrictions in Condition #8 limiting occupancy to year round residents or peak seasonal employees. The Locus consists of eight condominium units situated at 40 & 42 Nobadeer Farm Road, is shown on Assessor's Map 69 as Parcels 32.1 – 4 (inclusive) and 33.1 – 4 (inclusive), as Lots 4 & 5 on Land Court Plan 14342-H and as Units A – H (inclusive) on Plan File No. 2006-79. Evidence of owners' title is recorded at Master Condominium Certificate of Title No. C-47 and Transfer Memorandum Certificate No.s U-42223, U-42055, U-42239, U-42152, U-42211, U-42204, U-42235, and U-42203, all on file at the Nantucket County District of the Land Court. The site is zoned Residential Commercial 2 (RC-2).

- 63-14 Elizabeth A. Hughes 14 Spearhead Road Guay
  Action deadline March 11, 2015 *CONFLICTS*: NONE KNOWN

Applicant is requesting Special Permit relief pursuant to Zoning Bylaw Sections 139-30 and 139-7(a) in order to construct a commercial building, with interior storage or warehousing. Specifically, the Applicant seeks approval to construct a one-story 2,016 SF warehouse to be used for interior storage of products, goods, and materials associated with the retail business known as Blue Beetle, Inc.; to allow siting of loading zone, 2 parking spaces, driveway access, and 20% open space in accordance with Sections 139-16E(1), 139-18, 139-19, 139-20, and 139-20.1; and to allow the installation of a six foot chain-link fence along perimeter of two sides of the lot. The Locus is situated at 14 Spearhead Road, is shown on Assessor's Map 69 as Parcel 336, and as Lot 203 on Land Court Plan 26984-8. Evidence of owner's title is recorded at Certificate of Title No. 24894 on file at the Nantucket County District of the Land Court. The site, zoned CI (Commercial Industrial), is subject to a zoning freeze for the Residential Commercial 2 (RC-2) district.

See the above description of the project. The Planning Board approval for this subdivision specifically contemplated commercial activity with accessory residential use for employees. The proposed uses are consistent with other commercial properties in the area for which the Board has granted similar permits. Applicant has submitted two plans with different options for driveway, loading zone, and parking configuration. Staff prefers "Option 2". This is a corner lot abutting Flint and Spearhead roads. Pursuant to Section 139-20.1(2)(b) regarding driveway standards:

> *No driveway access shall be located closer than 25 feet from the curbline of an intersection street, measured from the nearest point of the driveway.*

Staff recommends approval.

- 64-14 Jivko V. Kalpazanov and Anna Kalpazanov 27 Appleton Road Williams
  Action deadline March 11, 2015 *CONFLICTS*: NONE KNOWN

Applicants are seeking relief by Special Permit pursuant to Zoning By-law Section 139-16C (1) to reduce the southerly side yard setback from 10 to 5 feet. Applicants propose to construct a garage, attached to the single-family dwelling, to be sited as close as 5.5 feet from the southerly side yard lot line. Due to the change in the setback requirement from 5 to 10 feet as a result of a change in zoning from RC-2 to R-10 in 2012, the locus was rendered pre-existing nonconforming as to side yard setback with the dwelling being sited as close as 9.3 feet from the northerly lot line. However, the Lot is conforming in all other respects and would remain so after construction. The Locus is situated at 27 Appleton Road, is shown on Assessor's Map 66 as Parcel 401, and as Lot 8 on Land Court Plan 13554-D. Evidence of owner's title is recorded at Certificate of Title No. 22590 on file at the Nantucket County District of the Land Court. The site is zoned Residential Ten (R-10).

See above description for relief requested. Pursuant to Section 139-16.C(1) setback waivers:

> *The Board of Appeals may grant a special permit to reduce the 10 foot side yard setback and the 10 foot side and rear yard setback in R-10 […] to 5 feet.*

Applicants bought the property in 2007 prior to the 2012 zoning change from RC-2 to R-10. This change reflects the primarily residential nature of the west side of Appleton Road. (The east side is zoned RC-2, R-5, and R-20.) Applicants had intended to expand the house prior to the zoning change but were unable to do so. Applicant states that there is no other suitable place to add this 510 SF garage. Applicant also suggested a boilerplate Condition that no further construction could take place within the required southerly side yard setback without further relief from the Board. Staff recommends approval with that condition.

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- 65-14 George S. Frazza and Marie L. Frazza 21 Sheep Pond Road Alger
  Action deadline March 11, 2015 *CONFLICTS*: NONE KNOWN
  Applicant is requesting relief by Variance pursuant to Zoning Bylaw Section 139-32 for a waiver from front and side yard setback provisions in Section 139-16 in order to relocate the existing structure away from the eroding coastal bank. Structure may be relocated across property lines and within the layout of Sheep Pond Road by virtue of a pending license agreement with the County of Nantucket. Applicant was recently granted a Temporary Permit pursuant to Zoning Bylaw Section 139-26.H in order to allow for an emergency relocation of the dwelling which is threatened by severe coastal erosion. The Locus is situated at 21 Sheep Pond Road, is shown on Assessor's Map 63 as Parcel 19, and as Lot 2 on Land Court Plan 35142-B. Evidence of owner's title is recorded at Certificate of Title No. 16963 on file at the Nantucket County District of the Land Court. The site is zoned Limited Use General 2 (LUG-2).

  The house at 21 Sheep Pond Road, currently threatened by severe coastal erosion, was granted a Temporary Permit at the November 13th hearing to move it out of immediate danger. Applicant is returning for Variance relief to allow the ultimate relocation of the structure to an area within the county layout of the road, for which a License from the BOS was granted. This matter would be similar to what was recently done on the east side of Baxter Road and at the end of Madaket Road. Staff recommends approval.

- 66-14 Summer Salt, LLC 13 West Dover Street Brescher
  Action deadline March 11, 2015 *CONFLICTS*: NONE KNOWN
  Applicant is seeking Special Permit relief pursuant to Bylaw Sections 139-33.A(1) and 139-7(a) to allow the change of use of a pre-existing nonconforming structure to a residential use. Specifically, applicant is seeking to convert the studio structure to a secondary dwelling. The locus is pre-existing nonconforming with the primary dwelling being sited 1.7 feet from the side yard lot line and the studio being sited 3 feet from the easterly side yard lot line and 3.1 feet from the northerly rear yard lot line where 5 foot side and rear yard setbacks are required. The studio, originally a shed built prior to the 1972 enactment of the Nantucket Zoning Bylaw, was altered and expanded when the side and rear yard setback requirements were 3 feet. The Locus is situated at 13 West Dover Street, is shown on Assessor's Map 55.4.1 as Parcel 196, and as Lot A on Plan File No. 2014-93. Evidence of owner's title is recorded at Book 1459, Page 58 on file at the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).

  The purpose of this application is to allow the change of use of the expanded shed/studio into a 2nd dwelling. The Applicant obtained 2nd Dwelling approval at the December 8th PB meeting. The PB noticed that the existing parking area serving the main dwelling is dimensionally non-compliant and stated that, if it were determined NOT to be pre-existing nonconforming, then it would have to be enlarged to at least 7 X 17 feet. The new proposed parking space is compliant at 9 X 20 feet. The spaces are parallel to W. Dover St., a one-way street. There is no prohibition against backing out onto this street. The Applicant's plan shows adequate parking to meet the requirement of 1 space for each dwelling in the ROH district.
  Applicant has included materials culled from the Building Department file as well as a Letter from a prior owner's attorney to the ZEO to explain the "evolution of the shed to a studio that has been used as habitable space for the last decade". Essentially, the Applicant, having purchased the property in November 2014, is a new owner attempting to regularize a noncompliant situation. Staff recommends approval.

- 68-14 Joanne Collins Smee and Timothy Smee 10 Mayhew Road Halsted
  Action deadline March 11, 2015 *CONFLICTS*: MA
  Applicant is requesting Special Permit relief pursuant to Zoning Bylaw Section 139-16.C(2) to validate an unintentional setback intrusion of portions of the dwelling by reducing the front yard setback requirement from 35 to 33.7 feet and the side yard setback requirement from 20 feet, or 10 feet for a lot of record, to 5.6 feet. In the alternative, Applicant requests Variance relief pursuant to Zoning Bylaw Section 139-32 for a waiver from the setback requirements in 139-16.A. The Locus is an undersized lot of record situated at 10 Mayhew Road, is shown on Assessor's Map 92.4 as Parcel 213, and as Lot 147 on Land Court Plan 5004-D. Evidence of owner's title is recorded at Certificate of Title No. 21893 on file at the Nantucket County District of the Land Court. The site is zoned Limited Use General 3 (LUG-3).

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This Applicant filed for relief pursuant to 139-16.C(2) which states:

> *The Board of Appeals may grant a special permit to validate unintentional setback intrusions not greater than 5 feet into a required yard and not closer than 4 feet from the lot line, provided that it shall first find that the burden of correcting the intrusion substantially outweighs any benefit to an abutter of eliminating the intrusion and, if the intruding structure was so sited after 1990, the siting of the structure was reasonably based upon a licensed survey.*

Staff recommended applicant include a request for relief by Variance as the burden of proof regarding the surveyor error rests upon the applicant and cannot merely be assumed as factual. The siting of these steps on the easterly (side) and southerly (front) sides of the structure, while "unintentional", has created side and front yard setback nonconformities. According to the 1997 Plot Plan (not an instrument of record) drawn by Shugrue, the steps did not exist and the structure was shown to be dimensionally compliant.
If the Applicant cannot meet the standards of 139-16.C(2), the Board would have to find that, as stated in Section 139-32.A (Variances):

> […] *owing to circumstances relating to soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and the desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of such bylaw.*

- 69-14 Deborah Killen Lothian, Trustee of Lobster Plot Nominee Trust, as Owner, and Jonathan Raith, as Applicant 14 Easy Street Cohen
Action deadline March 11, 2015 *CONFLICTS*: NONE KNOWN
Applicant is requesting Modification of prior Special Permit relief granted pursuant to Zoning Bylaw Section 139-17.C(5) in order to allow the elevation of the structure to meet building code requirements applied in coastal flood zones. Applicant seeks to alter the previously approved maximum height allowance from 32 to 33 feet in order to keep the historically appropriate window size and placement and to meet other code requirements. The Locus is situated at 14 Easy Street, is shown on Nantucket Tax Assessor's Map 42.3.1 as Parcel 13, as Lot B1 on Land Court Plan 7301-C and Lot A and a parcel of land lying east of Easy Street as shown on Land Court Plan 7301-B. Evidence of owner's title is registered as Certificate of Title No. 16514 in the Nantucket County District of the Land Court. The site is zoned Commercial Downtown (CDT).

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Applicant was before the Board at the October 9th hearing and was granted relief pursuant to Section 139-17.C(5) in order to alter and extend a pre-existing non-conforming mixed-use structure DECISION IS IN YOUR PACKET and more specifically to exceed the maximum allowable height of thirty (30) feet in order to preserve the historic portion of the structure. (*Voting Members were LB, SM, KK (against), MP, & GT).* The relief was granted based on the finding that the proposed height was considered as appropriate for the scale of the structures in the area, had obtained HDC approval, and would not be detrimental to the adjoining properties. The maximum granted was 32 feet. Applicant had originally applied for a height of 35 feet. He decreased the request to 32 feet because he was "advised by the engineer that he would be able to absorb a portion of the height increase with a waterproof basement." Applicant states that this is no longer the case and that both code requirements and architecturally historic integrity (in terms of window placement) necessitate a height of 33 feet.

IV. OTHER BUSINESS:

- CITIZENS' WARRANT ARTICLES related to Zoning
- Approval of Revised 2015 Zoning Board of Appeals Meeting Schedule