



**TOWN OF NANTUCKET  
BOARD OF APPEALS  
NANTUCKET, MA 02554**

**STAFF REPORT**

Date: February 11, 2019

To: Zoning Board of Appeals

1 From: Eleanor W. Antonietti  
Zoning Administrator

Re: February 14, 2019

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**I. APPROVAL OF THE MINUTES:**

- January 10, 2019 – Regular Meeting
- January 16, 2019 – Surfside Crossing 40B PH
- January 23, 2019 – Surfside Crossing 40B PH

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**II. OLD BUSINESS (CONTINUED PUBLIC HEARINGS AND VOTES MAY TAKEN):**

- 20-18 Surfside Crossing, LLC Surfside Crossing 40B Freeman  
Extended Close of Public Hearing Deadline March 15, 2019 (180 days from Initial Public  
Hearing) Decision Action deadline April 23, 2019 (40 days from close of Public Hearing)  
*Sitting ET LB SM KK At table: GT JM*  
*The primary purpose of the hearing will be the scheduling of the next Continued Public Hearing to  
a location, date, and time certain. No substantive discussion is planned.*
- 23-18 Adam Ross and Emma Ross 50 Okorwaw Avenue Beaudette  
**CONTINUED TO MARCH 14, 2019** *Sitting ET LB SM MJO JM At table: MP GT*

- 50-18 Milton C. Rowland and Roberta M. Rowland 2 Cottage Court Brescher  
 Action Deadline March 13, 2019 *Sitting* ~~ET~~ SM LB MJO KK *At table:* MP GT JM  
 Applicants are seeking Special Permit relief pursuant to Zoning By-law Section 139-33.A in order to construct a 27 sq. ft. addition to connect the pre-existing nonconforming shed and garage, both sited as close as 0.1' from the easterly lot line where required side yard setback distance is 5'. Applicant further seeks approval of a change of use of the proposed merged structure into either a secondary dwelling or garage/studio. While the alteration consists of an expansion within the easterly side yard setback, the resulting single structure will be no closer to the side yard lot line than the existing structures. The Locus is situated at 2 Cottage Court, is shown on Assessor's Map 55.4.1 as Parcel 91, and as Lot 3 on Plan Book 15 Page 68. Evidence of owner's title is recorded in Book 1632, Page 92 on file at the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).

**FROM IPH on 12/13/18**

The Locus (See **Page 43** for Proposed Site Plan prepared by Teddy King) is a drumstick shaped lot of record, having double frontage onto Cottage Court to the north and Warren Street to the south, although official frontage is taken from Cottage Court and is 35.44', inadequate to meet the minimum 50' frontage requirement. It has a lot area of 8,077 SF in the ROH district where minimum required lot area is 5,000 SF. As shown on an As-Built Plot Plan prepared by Emack, dated 1/16/2018 (**Page 59**), the property is improved with a 1,035 SF DU, a 375 SF garage, and a zoning shed containing ≤ 200 SF, for an existing GCR of 17.4% where 50% GCR is allowed. The DU is compliant as to setbacks (0' front yard setback in ROH) whereas the shed and garage are sited as close as 0.1' from the easterly side yard lot line. There is a slight discrepancy in lot size with Emack calculating it at 8,085 SF, partially explained by a notation:

NOTE: PLAN FOR ABUTTERS RECORDED  
AS PLAN NO. 2002-21 WOULD APPEAR  
TO CLAIM APPROX. 25 SF OF LAND SHOWN  
AS LOT 3 ON PLBK 15/68 (LOCUS).

Applicant purchased the property in February 2018. In late March 2018, applicant was issued Bldg. Permit #486-18 for work (partial demolition and new construction) on the existing 1 ½ story single family DU.

Applicant now proposes to connect the two pre-existing nonconforming accessory structures – the garage and shed – with a 27 SF addition in order to convert them into one single story structure to be used either as a 2<sup>nd</sup> DU or a garage/studio. Applicant has received HDC approval for the proposed alterations at COA 71108, granted in October 2018.

There are 2 abutters who submitted comments in opposition and one who submitted comments in support (**Pages 55-57**). Staff has also added Applicants' deed, a 10/5/2018 Google Earth image, and several record plans to indicate relationship of commenting abutters' properties to Locus (**Pages 60-67**).

Relief is sought pursuant to **Section 139-33.A(1)**:

*(1) Preexisting, nonconforming structures or uses may be extended, altered, or changed, provided that:  
(a) The special permit granting authority finds that such extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure and/or use to the neighborhood. Where an existing structure violates a front, rear, or side yard setback distance, the special permit granting authority may issue a special permit to allow an extension, alteration, or change to the structure, provided that the nonconforming setback distance is not made more nonconforming and based upon a finding that the*

*extension will not be substantially more detrimental to the neighborhood than the existing nonconformity; [...]*

Section 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.*

**UPDATE:**

At the IPH on 12/13/18, applicant’s attorney explained the proposal to join the shed and garage by constructing a 27 SF connector addition. The initial intention had been to convert to either garage/studio or 2<sup>nd</sup> DU. According to a letter written by the Owner/Applicant (Page 69), the property had been abandoned for over 10 years and had become an “eyesore”. The Board asked for clarification and additional information on:

1. Specific definitive use of the structure
  - a. The structure will be converted into a Garage / Studio as shown on Pages 74 - 77
2. Does the project includes demolition/reconstruction
  - a. Plan is to strip shingles on wooden part and put a layer of 5’ x 8’ fire code sheet rock and ½” nail base. Still several inches away from property line. Not proposing to demo any of the bldg.
3. Will there be foundation work
  - a. Foundation stays unchanged
4. Methodology and scope of construction
  - a. See above and below.
5. HDC approval materials
  - a. Fenestration and elevations are same.
  - b. Front of garage is staying same.
  - c. Keeping garage doors.
  - d. Rebuilding west wall.

At the continued PH on 1/10/19, the Board expressed concerns regarding the understanding by the direct abutter to the east, Priscilla Johnson, of the extent/scope of the work and the likelihood that the applicant will need access to her property in order to carry out some of the work on the east elevation of the structure. The conversion into a garage/studio is arguably intensifying the use from storage to studio where people will be staying. The Board felt strongly that the abutter, having already expressed concerns by email (Page 56), should provide some sort of written acknowledgement and assent that she was aware of and no longer opposed to the project. The Applicant attempted to obtain written response from the owner and her daughter by email (See Page 78 – 79) but had not heard back. Apparently, Mrs. Johnson plans to attend the hearing.

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**III. NEW BUSINESS (INITIAL PUBLIC HEARINGS AND VOTES MAY BE TAKEN):**

- 01-19 Steven W. Russo, Tr., 43A Union Street Trust 43A Union St Reade  
 Action Deadline May 15, 2019 CONFLICTS: NONE KNOWN  
 Applicant is seeking Special Permit relief pursuant to Zoning Bylaw Sections 139-7(a), 139-18, 139-30, and 139-33.A to allow the alteration, expansion, and change of use of a pre-existing  
 2 Fairgrounds Road Nantucket Massachusetts 02554  
 508-325-7587 telephone 508-228-7298 facsimile

nonconforming residential garage structure. Specifically, Applicant proposes to expand and convert the 190 sq. ft. garage into a 463 sq. ft. single family dwelling. The garage is a pre-existing nonconforming structure as to both side yard setback and use. While the existing side yard setback intrusion will remain, the proposed dwelling will be dimensionally compliant as to all other zoning requirements. Applicant is also requesting a parking waiver of the 1 required space pursuant to Section 139-18. The Locus, an undersized lot created pursuant to M.G.L., c. 41 Section 81L, is situated at 43A Union Street, is shown on Assessor's Map 42.3.2 as Parcel 29.1, and as Lot B on Plan No. 2017-98. Evidence of owner's title is recorded in Book 1673, Page 236 on file at the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).

This matter was scheduled to be opened on 1/10/19 but the Applicant requested a continuance to allow for time to address the concerns submitted by Abutters (Pages 103 – 129). The Applicant submitted supplemental materials and indicated that additional materials will be presented at the IPH.

The Locus is nonconforming as to lot area, containing about 926 square feet, where 5,000 square feet is required, has frontage of about 27.5 feet on Union Street where 50 is required, and is a pre-existing, nonconforming lot under By-law §139-33.A(3), having been created pursuant to Mass. Gen. Laws c. 41, §81P, based upon the exception in the clause of Mass. Gen. Laws c. 41, §81L for lots containing two or more structures that predate the adoption of subdivision control in the Town. The existing structure on the Locus, a 190 SF garage, is pre-existing, nonconforming as to side yard setback, being as close as 0.1 feet where a five (5) foot side setback is required. Applicant proposes to expand and convert the existing structure into a 463 SF 2-bedroom single family dwelling, with one bedroom in the basement. This is the maximum ground cover allowable as 50% of 926 yields 463 SF. The pre-existing nonconforming setback distance will not change although the amount of massing in the setback will be reduced.

Relief for the alteration and expansion is sought pursuant to **Section 139-33.A(1)**:

*(1) Preexisting, nonconforming structures or uses may be extended, altered, or changed, provided that:*

*(a) The special permit granting authority finds that such extension, alteration, or change shall **not be substantially more detrimental than the existing nonconforming structure and/or use to the neighborhood.** Where an existing structure violates a front, rear, or side yard setback distance, the special permit granting authority may issue a special permit to allow an extension, alteration, or change to the structure, provided that the nonconforming setback distance is not made more nonconforming and based upon a finding that the extension will not be substantially more detrimental to the neighborhood than the existing nonconformity; [...]*

**Section 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.***

One parking space would be required pursuant to Section 139-18.B. Given the configuration of the proposed new DU, there is no space to site even a compact (7' x 17') space.

Relief from the parking requirement may be granted pursuant to Section 139-18.D(1) which reads:

**D.** *Relief from parking requirements of this chapter:*

*(1) May be secured through the issuance of a special permit by the special permit granting authority, provided that such authority finds;*

- (a) That the granting of such relief is in harmony with the general purpose and intent;*
- (b) That full compliance is physically impossible for the applicant to provide, or, if physically possible, would have a significant adverse effect upon the scenic or historic integrity of the neighborhood; and*
- (c) The granting of relief would not be contrary to sound traffic, parking or safety considerations; [...]*

The project does have HDC approval (Pages 94 – 99). The ‘front’ elevation faces northwest to the abutting 43 Union St. The HDC plans on Page 99 & 98 show a set of ‘stone steps’ in the northwesterly side yard setback which are not shown on the Proposed Conditions plan on Page 86. The definition of Structure in Section 139-2.A was amended by virtue of passage of Article 18 at the 2017 Annual Town Meeting. The amended definition of Structure, in relevant part, reads:

*Anything constructed or erected, the use of which requires a fixed location on the ground. "Structure" shall be construed, where the context allows, as though followed by the words "or part thereof" and shall include, but not be limited to, buildings, retaining walls which support buildings, platforms, **more than two steps providing access to a structure that in total are more than 10 feet in length and two feet in depth in all districts** except for R-40, LUG-1, LUG-2, LUG-3, and MMD, [...].*

The Board will need to ensure that this stone step / stoop meets those criteria.

Several of the comments received were focused on the existing old elm tree. The above-referenced new submissions appear to address those concerns. Staff has included the relevant sections of Chapter 132 regarding trees & shrubs (See Page 100).

Staff recommends that a construction protocol be submitted to protect the abutter to the southeast at 45 Union St. who has submitted comments in opposition, through Atty. Steven Cohen. This has been the case with other comparable scenarios where there was a very close proximity to the abutting property and structure. It should be noted that 45 Union St. is itself a substandard, undersized lot (1,398 SF) with a pre-existing nonconforming 580 SF DU sited in both side yard and the rear yard setbacks. A prior owner applied for relief in 1980 to validate the siting of a chimney as close as 2’ from the shared lot line with Locus. (The structure had been used for casket storage before being renovated and converted into a residential use.) The relief was unanimously denied by a 3-member Board. An attorney for the then owner filed an appeal and a CO was eventually issued in 1981 for the DU. The exterior wall of the As-Built DU at 45 Union St. is therefore sited as close as 34” from the shared lot line with the chimney being as close as 2’.

Staff further recommends the standard construction moratorium from Memorial Day through Labor Day of any given year and no further expansion within the setbacks without additional relief from the Board.

- 03-19 Estate of Nikki S. Toole; Edward S. Toole, Tr., ECMJ Nominee Trust; Sarah F. Alger, Tr., 15 Sandsbury Nominee Trust 11, 13, and 15 Sandsbury Road Alger  
**REQUEST TO CONTINUE, WITHOUT OPENING, TO FEBRUARY 14, 2019**

Applicant is seeking Special Permit relief pursuant to Zoning By-law Sections 139-30 and 139-33.A, or in the alternative Variance relief pursuant to Section 139-32, to reconfigure 3 pre-existing nonconforming lots by way of lot line adjustments between the 3 owners. As proposed, Lot 707 would be less conforming as to area and frontage; Lot 717 would be more conforming as to area and frontage; Lots 718 and 719 would be less conforming as to area and unchanged as to frontage. Development potential as to ground cover and allowed number of bedrooms would remain unchanged as a result of the proposed reconfigurations. Locus is situated at 11, 13, and 15 Sandsbury Road, is shown on Assessor’s Map 92.4 as Parcels 272, 284, and 285, and as Lot 707 upon Land Court Plan 5004-36 and Lots 717, 718, 719 upon LCP 5004-42. Evidence of owners’

title is registered on Certificate of Title No.s 18503, 23750, and 24616 at the Nantucket County District of the Land Court. The site is zoned Limited Use General Three (LUG-3).

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| ▪ | 04-19<br>Linda A. Yates<br>Action Deadline May 15, 2019 | 21 Derrymore Road<br><i>CONFLICTS: NONE KNOWN</i> | Cohen |
|---|---|---|-------|

Applicant is requesting relief by Variance pursuant to Zoning By-law Section 139-32 for a waiver from the 5 foot side yard setback provision in Section 139-16 in order to construct a new dwelling as close as 2 feet from the northerly side yard lot line. The property is located at 21 Derrymore Road, shown on Assessor’s Map 41 as Parcel 117 and as Lot 51 upon Land Court Plan 13199-V. Evidence of owner’s title is registered on Certificate of Title No. 22854 at the Nantucket County District of the Land Court. The site is zoned Residential -1 (R-1).

This is a request for relief by Variance to allow the siting of a new dwelling within the 10’ northerly side yard setback on the elevation which abuts an unconstructed former private way. The way, a paper street known as Dartmouth Lane, was authorized for acquisition and disposition at the 2014 Annual Town Meeting as part of the “Yard Sale Program”. The 2014 Roadway Acquisition Plan is on Page 150 of the packet and the 2014 Order of Taking is on Pages 172 - 186.

The decision would have to meet the threshold (established by MGL 40.A § 10 and locally per Section 139-32.A) which requires that the Board:

*[...] specifically finds that owing to circumstances relating to soil conditions, shape or topography of 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 or purpose of such bylaw.*

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The Disposition of Parcel D, which Applicant/Owner is entitled to purchase, is held up in Land Court where certain “Yard Sale” parcels are subject to registration due simply to the technicality of a particular type of property description. The submission of the required materials to Land Court began in early 2016. This, along with many other Yard Sale-related registrations, are undergoing inexplicable protracted delays in the Land Court Examiners Dept., due ostensibly to bureaucratic overload. Several registrations did occur in 2018 and the hope is that the languishing filings will obtain the necessary imprimaturs in 2019. Essentially, it is through no fault of either the Applicant or the Town that the delays have held up the final step of the registration process. Initially the plan needs approval by the Survey Dept. and an Order to Approve the plan is issued. The new plan is sent down to the Nantucket District. An S-Petition is filed to:

- (a) recognize the Dartmouth Lane Taking and eliminate those portions of Dartmouth Lane, as shown on the above-referenced plan, in accordance with the Order of Taking;
- (b) Order that a Certificate of Title be issued in the name of the Town for Parcel D on Plan No. 2014-63.
- (c) Establish the abutters as shown on the old and new Land Court Plans.

Once the S-Petition is filed and approved, the Town can convey to the abutter for a price determined and approved by the Real Estate Assessment Committee. Parcel D will be acquired by and merged with the owner’s property, adding approximately 16.53’ of width on the north side and 2,517 SF of lot area to property. Upon acquisition and merger, the Variance relief will no longer be needed and the relief will be moot as the proposed DU will be sited 17’-2” from the newly established northerly lot line.

The Board has granted similar Variance approvals in comparable scenarios (4 Ames St. and 62 Walsh Street).

The project has received HDC approval (COA and plan on Page 158 – 163).

There is one letter in the packet (Page 185) from the direct abutters to the south who support the application as it allows for the siting of the new DU as far away as possible from their lot.

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**IV. OTHER BUSINESS** (Votes may be taken)

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**V. ADJOURNMENT** (VOTE WILL BE TAKEN)