



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

**STAFF REPORT**

Date: March 12, 2019

To: Zoning Board of Appeals

1 From: Eleanor W. Antonietti  
Zoning Administrator

Re: March 14, 2019

**I. APPROVAL OF THE MINUTES:**

Pages 5 - 8

- February 14, 2019

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

- 23-18 Adam Ross and Emma Ross 50 Okorwaw Avenue Beaudette  
CONTINUED TO APRIL 11, 2019 *Sitting* ET LB SM MJO JM *At table.* MP GT

- 04-19 Linda A. Yates 21 Derrymore Road Cohen  
Action Deadline May 15, 2019 *CONFLICTS:* NONE KNOWN

Pages 12 - 71

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 18 of the packet and the 2014 Order of Taking is on Pages 40 - 51.

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.*

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 imprimatur 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 Pages 26 – 31).

**UPDATE:**

This matter was opened on 2/14. After hearing testimony from both the counsel and the applicant, he Board asked the applicant to consider changing the design of the proposed primary DU such that Variance relief would not be necessary. Various suggestions were made as to how this could be accomplished such as downsizing or removing the window well. The day after the PH, counsel for the applicant submitted an email (SEE Page 13 of Packet) confirming that the applicant prefers to retain her existing design and move forward with requesting the Variance relief, cited in pertinent part below:

[...] As was discussed, when the Yard Sale is done, she will end up with a 17' offset on the north side, more than triple the 5' requirement, so we view this relief as temporary, but helpful, since she has waited for 5 years for the YS to be completed, and we expect that it will still be 1-2 years before it is done.

Ms. Yates is comfortable with the conditions that the Board discussed, including:

- 1) Requiring that the parking be east of the western side of the house.
- 2) Requiring that the nonconformity be cured before a CO is issued.
- 3) Agreeing that a deed restriction will be recorded prohibiting subdivision when the YS land is added, likely be in the Deed from the Town.
- 4) Agreeing that the property is not in compliance with the relief granted if the owner declines to purchase the YS land from the Town.
- 5) Affirming that there will not be any construction built over the lot line (I'm not sure that this is legally needed. She will likely just eliminate that window well).

There is one letter in the packet (Page 53) 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. This abutter has submitted a 2<sup>nd</sup> letter, received on March 12<sup>th</sup> (INCLUDED AT THE END OF THIS REPORT). A representative for the Abutter will be present at the hearing.

The Board asked Staff to include some prior decisions in which comparable relief was granted. These three Variance decisions are found on Pages 54-71 of the Packet.

As of 2/25/2019, an Order from the Land Court was filed in one of the Dartmouth Lane matters which indicates forward momentum and lends credence to the notion that the Land Court is progressing with the Dartmouth Lane Petitions, which would include the Yates property. There is no way of knowing exactly when a new Certificate of Title will be issued in the name of the Town for yard sale Parcel D, but this is a positive sign. Once that happens, the remaining step is for the Town to schedule the conveyance as a Consent Item at the Select Board's monthly real estate meeting, typically the final monthly meeting.

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 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).

Pages 73 - 135

This matter was scheduled to be opened on 1/10/19, but the Applicant requested a continuance to 2/14 to allow for time to address the concerns submitted by Abutters (Pages 95 – 121). The Applicant submitted supplemental materials on 2/7 and indicated that additional materials would be presented on 2/14, but on 2/13 requested another continuance to 3/14 stating that they were still

working on materials relating to the manner in which work will be done which would not be ready in time for the 2/14 ZBA meeting.

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; [...]*

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**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 86 – 91). The ‘front’ elevation faces northwest to the abutting 43 Union St. The HDC plans on Pages 89 & 91 show a set of ‘stone steps’ in the northwesterly side yard setback which are not shown on the Proposed Conditions plan on Page 78.

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 92-93).

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. The exterior wall of the As-Built DU at 45 Union St. is 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.

On 2/12, Staff received a forwarded email (**INCLUDED AT END OF THIS REPORT**) from Robert McNeil, Director of Public Works, recapitulating a discussion at the 2/12 Tree Committee meeting about the *"mature American Elm (town tree) that may be detrimentally affected by this proposal."*

and further stating that Tree Warden, Dave Champoux, may attend the meeting to discuss on the Tree Committee's behalf.

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- 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 APRIL 11, 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).

- 05-19 Why Worry II, LLC 8 Towaddy Lane Kelsey  
Action Deadline June 12, 2019

**Pages 137 - END**

Applicant is requesting relief by Special Permit pursuant to Nantucket Zoning By-law Section 139-33.A, to allow a change of use from accessory to residential of a pre-existing nonconforming attached a shed and to alter a pre-existing nonconforming shed and dwelling structure by enclosing a deck (stoop) to be converted into a bedroom. The resulting footprint of the pre-existing nonconforming structure will remain unchanged. The existing ground cover will be expanded by approximately 28 square feet as a result of the enclosure, yielding a total proposed ground cover of

1,499 sq. ft. where maximum allowable ground cover pursuant to Section 139-33.E(1)(b) is 1,500 sq. ft. Locus, an undersized lot of record, is located at 8 Towaddy Lane, shown on Assessor's Map 49.3.2 as Parcel 15.5 and as Lot 6 on Plan File 9-E. Evidence of owner's title is recorded in Book 1443, Page 28 on file at the Nantucket County Registry of Deeds. The site is zoned Sconset Residential Twenty (SR-20).

Applicant is requesting relief by Special Permit pursuant to By-law Section 139-33.A, to allow a change of use and alteration of pre-existing nonconforming structures. The proposal is to convert the attached shed and deck/stoop (to be enclosed) into a bedroom with no change to the footprint. The enclosure of the deck/stoop will increase the existing ground cover (1,471 SF) by 28 SF, resulting in a total proposed ground cover of 1,499 SF where maximum allowable ground cover pursuant to Section 139-33.E(1)(b) is 1,500 SF. Locus is an undersized lot of record containing 8,511± SF in the SR-20 zoning district where minimum lot area is 20,000 SF. The DU is pre-existing nonconforming as to side yard setbacks, being as close as 6.4' from both the northerly and southerly side yard lot lines where minimum setback distance is 10'.

The project benefits from HDC approval (COA 71520 on Page 147 of Packet).

This lot compliant when created with the approval of an AR subdivision circa 1980 (See subdivision record plan on Page 166) when the zoning was SR-1. See 1988 As-Built Plot Plan on Page 156 which shows "Zoning at time of Subdivision" and Current Zoning (SR-20). The DU was constructed circa 1981 and CO was issued in 1984. The Locus was rendered pre-existing nonconforming when the zoning was changed to SR-20 (believed to be circa 1984).

The relief is to be granted pursuant to Section 139-33.A which reads:

*(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; [...]*

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

- ANNUAL TOWN MEETING – General Timeline & Information
  - Warrant as adopted available on Town website – Friday, March 8, 2019

**SEE LINK BELOW:**

<https://www.nantucket-ma.gov/DocumentCenter/View/23975/2019-Annual-Town-Meeting-Warrant-with-Finance-Committee-Motions>

- Printed Warrant mailed out to registered voters – Thursday, March 21, 2019
- ATM – Monday, April 1, 2019 at 6pm

- ANNUAL TOWN ELECTION – Tuesday, April 9, 2019

**SEE LINK BELOW:**

<https://www.nantucket-ma.gov/593/Town-Elections>

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**V. EXECUTIVE SESSION: (Votes may be taken).**

The Board may entertain a motion to go into executive session under G.L.c.30A, §21(a)(3) for the purpose of discussing strategy with respect to litigation, which are known as 1) Rugged Scott LLC v. Nantucket Zoning Board of Appeals, Housing Appeals Committee No. 2018-01 and concerns a denial by the Zoning Board of Appeals of a request by Rugged Scott LLC to modify the Beach Plum Comprehensive Permit so as to allow a garage to be placed upon Lot 27 Beach Plum (8 Blazing Star Road), an affordable lot, for the benefit of and for the purpose of serving Lot 28 Beach Plum (1 Blue Flag Path), an adjacent market rate lot; and 2) Rugged Scott LLC v. Zoning Board of Appeals, Housing Appeals Committee No. 2018-04, which concerns a denial by the ZBA of a request by Rugged Scott LLC to modify the Beach Plum Comprehensive Permit so as to allow a garage built on Lot 24 Beach Plum (12 Blazing Star Road), an affordable lot, to be used for the benefit of Lot 23 Beach Plum (14 Blazing Star Road), a market rate lot, because an open meeting discussion may have a detrimental effect on the litigating position of the Board.

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

**LINDA A. YATES**

**21 Derrymore Road**

**FILE NO. 04-19**

**VARIANCE**



**From:** [John E. Gould](#)  
**To:** [Eleanor Antonietti](#)  
**Cc:** [John E. Gould](#); [Jack Bulger](#); [Sophie Metz](#); [Steven Cohen](#); [Mr. & Mrs. Frank Headley](#); [Bonnie Gould](#)  
**Subject:** Fwd: Application of Linda Yates for a Variance with respect to 21 Derrymore Road  
**Date:** Tuesday, March 12, 2019 3:50:23 PM

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To: The Members of the Zoning Appeals Board

From: John E. Gould  
19 Derrymore Road

Regarding: Application of Linda Yates for a Variance with respect to 21 Derrymore Road

I am writing to follow up on my email below.

As owners of 19 Derrymore Road, and because it is very important to us that the Board grant the Variance requested by Ms. Yates for 21 Derrymore Road, we have authorized Mr. Jack Bulger to appear at the upcoming hearing on March 14 and to act as our spokesperson.

We understand that a neighbor from the Delaney Road area spoke against the Variance on the grounds that too much density is being allowed in the Delaney Road area.

The point made about density is NOT applicable to the 21 Derrymore Road situation.

Granting the Variance will serve to reduce the appearance of density, and thus improve the overall appearance of homes on Derrymore Road, because it will allow Ms. Yates to build her home as far away from our property as possible.

Not granting the Variance will force Ms. Yates to build her home much closer to our property line than is desirable, and thus serve to increase the appearance of density and decrease the beauty of Derrymore Road.

Please grant the Variance.

Thank you very much.

John E. Gould

Begin forwarded message:

**From:** "John E. Gould" <[jegmbj@aol.com](mailto:jegmbj@aol.com)>  
**Subject:** Application of Linda Yates for a Variance with respect to 21 Derrymore Road  
**Date:** February 6, 2019 at 10:54:24 AM EST  
**To:** [eantonietti@nantucket-ma.gov](mailto:eantonietti@nantucket-ma.gov)

**Cc:** "[jegmbj@aol.com](mailto:jegmbj@aol.com)" <[jegmbj@aol.com](mailto:jegmbj@aol.com)>, [Steven@Cohenlegal.net](mailto:Steven@Cohenlegal.net), "[bjmjg@aol.com](mailto:bjmjg@aol.com)" <[bjmjg@aol.com](mailto:bjmjg@aol.com)>, "[fmhcch@aol.com](mailto:fmhcch@aol.com)" <[fmhcch@aol.com](mailto:fmhcch@aol.com)>, Sophie Metz <[sophiemetz@gmail.com](mailto:sophiemetz@gmail.com)>

To: The Members of the Zoning Appeals Board

From: John E Gould  
19 Derrymore Road

Regarding: Application of Linda Yates for a Variance with respect to 21  
Derrymore  
Road

I am writing on behalf of Carol and Frank Headley, my wife Bonnie Gould, and myself.

We have owned the property at 19 Derrymore Road jointly since 1991, and we built our house on the property in 1996. Title to the property is now held by the Shared Haven Nominee Trust, with Frank and me as the Trustees and Carol and Bonnie as the sole and equal beneficiaries.

Our property is located immediately to the south of 21 Derrymore Road - - which is the property for which Linda Yates is seeking a Variance.

We have received a copy of the Application for the Variance submitted on Linda Yates' behalf by her attorney, Steven Cohen.

As the immediate southerly neighbors of 21 Derrymore Road, we write to recommend, and respectfully request, that the Variance be granted.

This would allow Linda Yates to build her house as far to the north as possible, thus enhancing the distance between our house and her new house, while also serving to preserve the attractive cadence of houses on Derrymore Road.

If you would like to receive any additional information, please do not hesitate to call me at 914-260-5157 or to email me at the above email address.

Thank you very much.

John E. Gould

**STEVEN W. RUSSO, TR.,  
43A UNION STREET TR.**

**43A UNION STREET**

**FILE NO. 01-19**

**SPECIAL PERMIT**

**From:** [Andrew Vorce](#)  
**To:** [Eleanor Antonietti](#)  
**Subject:** FW: ZBA Application - 43A Union Street  
**Date:** Tuesday, February 12, 2019 4:33:09 PM

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Please provide to ZBA-thanks.

**Andrew V. Vorce, AICP**

Director of Planning

Nantucket Planning & Economic Development Commission  
Planning and Land Use Services (PLUS)  
2 Fairgrounds Road  
Nantucket, MA 02554

Telephone: 508-325-PLUS (7587)



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**From:** Robert McNeil  
**Sent:** Tuesday, February 12, 2019 4:29 PM  
**To:** Andrew Vorce <AVorce@nantucket-ma.gov>  
**Cc:** David Champoux <dcland@comcast.net>  
**Subject:** ZBA Application - 43A Union Street

Andrew:

During public comment at today's Tree Committee meeting Cormac Collier (Land Council) requested that a representative from the Tree Committee appear before the ZBA to provide feedback on this application in regards to the mature American Elm (town tree) that may be detrimentally affected by this proposal.

Kindly forward this email to the ZBA Chair.

Tree Warden Dave Champoux (cc'd here) is planning to attend this Thursday's 1PM meeting to discuss on the Tree Committee's behalf.

Thanks again,

Rob

**Robert D. McNeil III, P.E., MPA**  
Public Works Director  
188 Madaket Road  
Nantucket, MA 02554  
Ph: (508) 228-7244  
Email: [rmcneil@nantucket-ma.gov](mailto:rmcneil@nantucket-ma.gov)