



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

STAFF REPORT

Date: April 9, 2019

To: Zoning Board of Appeals

1 From: Eleanor W. Antonietti
Zoning Administrator

Re: April 11, 2019

I. APPROVAL OF THE MINUTES:

- March 14, 2019 – Regular Meeting
- March 26, 2019 – Surfside Crossing 40B PH
- March 29, 2019 – Surfside Crossing 40B PH

**PACKET
PART 1**

Pages 6 -25

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

- 23-18 Adam Ross and Emma Ross 50 Okoraw Avenue Beaudette
Action Deadline May 31, 2019 *Sitting* ET SM LB MJO JM *At table:* MP GT
REQUEST TO CONTINUE, WITHOUT OPENING, TO MAY 9, 2019

- 01-19 Steven W. Russo, Tr., 43A Union Street Trust 43A Union St Reade
REQUEST TO WITHDRAW W/O PREJUDICE

Sitting ET SM MJO KK GT *At table:* MP JM

Section 139-30.B(4)

Any application for a special permit which has been transmitted to the special permit granting authority may be withdrawn without prejudice by the petitioner prior to the publication of the notice of a public hearing thereon. Thereafter, an application can be withdrawn without prejudice only with the approval of the special permit granting authority.

- 04-19 Linda A. Yates 21 Derrymore Road Cohen
Action Deadline May 15, 2019 *Sitting* SM KK GT JM ~~MP~~ LB^{Mullin}

Pages 32 -127

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).

FROM PREVIOUS STAFF REPORTS:

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 74 of the packet and the 2014 Order of Taking is on Pages 95 - 106.

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 Pages 81–86).

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 98 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).*

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There are two letters in the packet (Pages 108-109), both from the same 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.

The Board asked Staff to include some prior decisions in which comparable relief was granted. These three Variance decisions are found on Pages 110-127 of the Packet.

At the 3/14 PH, the Board ascertained that an Order from the Land Court had been filed in one of the Dartmouth Lane matters, indicating progress regarding the Land Court process with the Dartmouth Lane Petitions. As a result of this, the Board asked the applicant to furnish some proof that an S-Petition was filed in connection with this Locus. At the urging of Staff and Atty. Hanley, Town Counsel did file the Petition for Approval of a Plan and Issuance of a New Certificate of Title with the Land Court Examiners Dept. on April 4th (See Pages 33–67). Once the new COT is issued in the name of the Town, 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):

- 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 MAY 9, 2019

- 06-19 Victor P. Haley 94 Orange Street Cohen
Action Deadline July 10, 2019 CONFLICTS: NONE KNOWN

Pages 130 -166

Applicant is requesting relief by Special Permit pursuant to Nantucket Zoning By-law Section 139-33.A, to alter and expand a pre-existing nonconforming dwelling in order to build a 2 story addition. The existing ground cover will be expanded by approximately 194 sq. ft. as a result of the enclosure of an existing deck, yielding a total proposed ground cover ratio of 34% where 50% is allowed. While the expansion will result in a vertical extension of the setback intrusion on the north elevation, the structure will be no closer to the northerly lot line than existing. To the extent necessary, Applicant further seeks rescission of prior relief (ZBA File No.s 021-80 and 071-97) granted in connection with the now abandoned commercial ‘guest house’ use to recognize the exclusively residential uses upon the Locus. Locus, an undersized lot of record, is situated at 94 Orange Street, shown on Assessor’s Map 55.1.4 as Parcel 47 and upon Plan File 51-P. Evidence of owner’s title is recorded in Book 1456, Page 28 on file at the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).

The project, an extension of a pre-existing setback nonconformity without making the nonconformity worse, consists of a 2-story addition resulting in a vertical expansion within the northerly side yard setback. Specifically, a portion of an existing deck will be enclosed and expanded upward, with slight expansion of the footprint on the east elevation. The portion of the existing deck which straddles the northerly lot line will be removed, thus curing that particular encroachment onto the abutting property. The HDC approved the project in early February (COA No. 71910). Per the approved HDC plans (See Pages 138-141), the purpose of the addition is kitchen/laundry on the 1st floor and bathroom, storage, and sunroom on the 2nd floor.

There is prior relief for the circa-1834 structure, which was formerly operated as a Guest House (known as the “Starbuck House” and/or Stumble Inn”). By virtue of this requested rescission of prior relief (See Pages 150-158) and approval of the application, the Locus and structure will be formally converted to residential use only (although applicant maintains that it has been exclusively residential since 2001 as a result of a transfer from the Inn operating owner(s) to a new owner), thus officially curing the nonconforming commercial use in a residential district.

The Locus is an undersized lot of record, containing approximately 4,208 SF where minimum lot size is 5,000 SF and having 37’ of frontage where minimum frontage is 50’. Existing and proposed conditions are shown on plans on Pages 136-137, respectively. The Locus is improved with a 979 SF DU and a 247 SF “cottage studio”, for a total ground cover of 1,226 SF or a GCR of 29.1%. The larger structure is pre-existing nonconforming as to northerly side yard setback, with a portion of the north elevation’s main mass and a deck encroaching over the shared lot line with 90 Orange St. The existing main DU will be expanded by approximately 194± SF, resulting in a total proposed ground cover of 1,420± SF, or a GCR of 34%. The addition will be sited no closer to the lot line than the existing structure, although a portion of it will be within the 5’ setback area.

[Incidentally, if relief were to be issued and if work for a validly issued Bldg. Permit in connection with the relief was commenced prior to July 1, 2019, the Locus would be eligible for up to 50% GCR resulting in maximum allowable Ground Cover of 2,104± SF. Subsequently, 40% would yield 1,683± SF. By virtue of unanimous passage of Article 47 at the 2019 ATM, the GCR in the ROH district is reduced from 50% to 40%. (According to the Planning Board report, “Research completed by the Planning staff confirmed that the existing ground cover of most of the 1,300+

properties in the ROH district is well under 40%, and that very few properties will become pre-existing nonconforming.”)]

Given the increased massing and relative proximity to adjacent structures, the Board may want to confirm whether or not foundation work or any type of excavation or shoring will take place. No basement is shown on the plans. If yes, construction protocols may be warranted. Furthermore, a construction moratorium for hardscaping and exterior construction in connection with the relief granted should be imposed from Memorial Day to Labor Day.

- 07-19 Kathy Herdt Charron & Paul R. Charron, Trustees, Paul R. Charron 48 Walsh Street Trust & Kathy Herdt Charron 48 Walsh Street Trust 48 Walsh Street Bracken Action Deadline July 10, 2019 CONFLICTS: NONE KNOWN

Pages 167 -199

Applicant is requesting relief by Special Permit pursuant to Zoning By-law Section 139-17(c)(7) to demolish and reconstruct a dwelling and place it on a new foundation in conformance with applicable building codes and FEMA regulations. The proposed height is 28.5'± above the minimum first floor elevation of 8'± for an average height of 32.3'± where 30' is maximum allowed pursuant to Section 139-17.A. The existing structure is nonconforming as to front and rear yard setbacks. The proposed structure will be sited so as to cure both the front and rear yard setback encroachments. Locus is situated at 48 Walsh Street, is shown on Assessor's Map 29 as Parcel 101 and as Lot 9 upon Land Court Plan 15800-F. Evidence of owners' title is registered on Certificate of Title No. 24495 at the Nantucket County District of the Land Court. The site is zoned Residential One (R-1).

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See description above for relief requested and Addendum on Page 169. Relief is sought pursuant to Section 139-17.C(7) cited in pertinent part below:

C. Exceptions by special permit. The special permit granting authority may grant a special permit to allow the following structures to exceed such height limitations:

[...]

The height of a structure which is situated within the "Areas of one-hundred-year Flood" and/or the "Areas of 100-Year Coastal Flood with Velocity" as established by the Federal Emergency Management Agency ("FEMA") and depicted upon the Flood Insurance Rate Map promulgated by FEMA, as from time to time revised, shall not exceed 30 feet above the minimum height at which the first floor of the structure will conform with all applicable building codes and FEMA requirements, except in the CDT District where a maximum height may be determined by special permit.

Existing and Proposed conditions are shown on plan on Page 172. Applicant proposes to demolish the existing 1,485 SF DU and construct a new 1,506 SF house on a FEMA compliant foundation with FFE at elevation 8.2±. The Locus falls within AE / Elevation 7. The existing structure has an approximate height of 25'. The resulting structure will be approximately 28.5' above the FFE, for a roof peak elevation of 36.5' and a proposed height of 32.3'± where maximum allowed height is 30'. The Locus contains 5,132 SF in R-1 and is pre-existing nonconforming with respect to front and rear yard setbacks. The newly constructed DU will be sited in compliance with all setbacks, thus curing the front and rear yard setback intrusions. The ground cover will be increasing from 28.9% to 29.3% where maximum GCR is 30%. The project has HDC approval (See Pages 184-199) with COA No.s 71763 (Demo) and 71873 (new DU).

- 08-19 Martin T. Long, Trustee, Martin T. Long Revocable Trust & Frances E. Long, Trustee, Frances E. Long Revocable Trust 100 Quidnet Road Glidden
REQUEST TO CONTINUE, WITHOUT OPENING, TO MAY 9, 2019 CONFLICTS: ET

IV. OLD BUSINESS (40B CONTINUED PUBLIC HEARING AND VOTES MAY TAKEN):

- 20-18 Surfside Crossing, LLC Surfside Crossing 40B Haverly/Reade/Hanley
Extended Close of Public Hearing Deadline April 11, 2019 (180 days from Initial Public Hearing)
Decision Action deadline May 20, 2019 (40 days from close of Public Hearing)
The Locus is situated at 3, 5, 7 and 9 South Shore Road and is shown on Assessor's Map 67 as
Parcels 336, 336.9, 336.8, and 336.7 and is shown as Lots 4, 3, 2, and 1 on Plan Book 25, Page 50 as
recorded at the Nantucket Registry of Deeds. The total lot area of the combined parcels is
approximately 13.5 acres. Evidence of owner's title is recorded in Book 1612, Page 62 at the
Nantucket Registry of Deeds. The property is located in a Limited Use General 2 (LUG-2) and
within the Public Wellhead Recharge District.

ORIGINAL APPLICATION: The Applicant is seeking a Comprehensive Permit in accordance with M.G.L. Chapter 40B, pursuant to a project eligibility letter issued by MassHousing, in order to allow a multi-family project consisting of 156 for-sale dwelling units comprised of 60 stand-alone single-family cottages on fee simple lots and 96 condominium units in 6 multi-family buildings, with 25% (39 units, 15 cottages and 24 condominium units) designated as affordable units, with a total of 389 bedrooms. The existing lots will be subdivided into 60 fee simple lots, 4 open space lots, and a 3.6 acre condominium lot. Off-street parking will consist of 2 spaces per cottage and 148 spaces designated for the condominiums. Infrastructure and amenities will be provided, however, the proposed project is proposed to connect to municipal water and sewer infrastructure.

MODIFIED PROPOSAL *previously under consideration:*

A multi-family project consisting of 100 for-sale dwelling units comprised of 40 stand-alone single-family cottages on fee simple lots and 60 condominium units in 5 multi-family buildings, with 25% (25 units, 10 cottages and 15 condominium units) designated as affordable units, with a total of 285 bedrooms. The existing lots will be subdivided into 40 fee simple lots, a 3.3 acre condominium lot, a 0.5 acre community lot, and 2.8 acres of open space lots. A total of 244 parking spaces will be provide consisting of 80 off-street parking spaces (2 per cottage), 124 spaces for the condominiums, 20 spaces for the recreational community building, and 20 overflow on street spaces. Infrastructure and amenities will be provided, however, the proposed project is designed to connect to municipal water and sewer infrastructure.

MODIFIED PROPOSAL *currently under consideration:*

A multi-family project consisting of 92 for-sale dwelling units comprised of 44 stand-alone single-family cottages on fee simple lots, 40 multi-family condominium units in a mix of 8-unit and 4-unit buildings, and 8 units located in 4 duplex buildings, with 25% (23 units consisting of 11 single-family cottages, 10 condominium units, and 2 duplex units) designated as affordable units. Infrastructure and amenities will be provided, however, the proposed project is designed to connect to municipal water and sewer infrastructure.

V. OTHER BUSINESS (Votes may be taken)

VI. ADJOURNMENT (VOTE WILL BE TAKEN)

2 Fairgrounds Road Nantucket Massachusetts 02554
508-325-7587 telephone 508-228-7298 facsimile

**PACKET
PART 2
to be
posted at a
later date**