I. APPROVAL OF THE MINUTES:
- March 12, 2020
- May 14, 2020

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

- 09-20 Timothy E. Quinlisk & Elizabeth A. Quinlisk 88 Quidnet Road Alger
  Action Deadline August 12, 2020 Sitting SM MJO KK MP GT At Table JM
  REQUEST TO CONTINUE TO JULY 9, 2020 CONFLICTS: LB ET
  Applicants are seeking Special Permit relief pursuant to Zoning By-law Sections 139-30 and 139-33.A(1) to alter, extend, and change a structure, which is pre-existing nonconforming as to side yard
setbacks, situated on a lot which is pre-existing nonconforming as to lot size and frontage. As proposed, the pre-existing nonconforming setback distances will not be made more nonconforming. The Locus is situated at 88 Quidnet Road, is shown on Assessor’s Map 21 as Parcels 109, 104, & 70, as Lots 5 & 6 upon Land Court Plan 8606-A and Lot 33 upon LCP 8606-B. Evidence of owner’s title is registered on Certificate of Title No. 26998 at the Nantucket County District of the Land Court. The site is zoned Residential Twenty (R-20).

- 11-20 Peter J. Mackay & Alison Mackay and David P. Mackay & Anne M. Phaneuf, Tr., Mackay/Phaneuf Family Trust 21 & 25 Monohansett Road Alger Action Deadline August 12, 2020 Sitting SM LB ET MJO KK At Table: GT MP JM REQUEST TO CONTINUE TO JULY 9, 2020

Applicants are seeking Special Permit relief pursuant to Zoning By-law Sections 139-30 and 139-33.A(1)(a) to alter, change, and extend a preexisting nonconforming lot, or in the alternative and to the extent necessary, a Variance, or the modification of an existing Variance, under By-law Section 139-32. The locus is improved with primary and secondary dwellings, constructed as principal residences for each couple. The dwellings have been treated separately, and for all intents and purposes as separate lots and structures, each served by a separate driveway. Applicants propose to separate out their properties for estate planning and other purposes. The proposal would encompass one of the dwellings and subdivision of the property into two nonconforming lots of approximately equal land area, each containing a dwelling. No additional dwellings are proposed, and the Applicants propose to permanently restrict each lot to one dwelling and no additional ground cover above that which would be allowed by right. In the alternative, the Applicants request relief to allow them to create a two-unit condominium or cooperative. The Locus is situated at 21 & 25 Monohansett Road, is shown on Tax Assessor’s Map 27 as Parcel 31, and as Lot 2 upon Land Court Plan 39913-A and as Lot 1 in Block 262 upon Plan No. 2, Page 60. Evidence of owner’s title is registered on Certificate of Title No. 17375 at the Nantucket County District of the Land Court and in Book 1655, Page 103 on file at the Nantucket County Registry of Deeds. The site is zoned Limited Use General One (LUG-1).

- 12-20 Anne Maletta 15 Broadway Fader Action Deadline August 12, 2020 Sitting SM LB ET MJO KK At Table: GT MP JM

Applicant is requesting relief by Special Permit pursuant to Zoning By-law Sections 139-30 and 139-33.A(1)(a) to allow alteration of the pre-existing nonconforming structure by adding an air-conditioning (“HVAC”) unit along the southerly side elevation of the structure. The proposed siting will be no closer to the lot line than the existing dwelling which is pre-existing nonconforming as to setbacks. In the alternative and to the extent necessary, applicant requests relief by Variance pursuant to Section 139-32 for a waiver from the side yard setback requirements in Section 139-16. Locus is situated at 15 Broadway, shown on Assessor’s Map 73.1.3 as Parcel 113 and upon Plan No. 2015-78. Evidence of owner’s title is recorded in Book 1506, Page 89 on file at the Nantucket County Registry of Deeds. The site is zoned Sconset Residential One (SR-1).

FROM PRIOR STAFF REPORT:
The Applicant proposes to alter the pre-existing nonconforming dwelling by adding an air-conditioning (“HVAC”) unit along the southerly side elevation of the structure. The HVAC unit will be no closer to the southerly lot line than the existing structure as a result of the proposed installation. The applicant proposes other additions and alterations to the structure which do not require relief. The proposed alterations have been granted Historic District Commission approval by virtue of Certificate of Appropriateness No. HDC 2019-10-0075.
As shown on the Existing Conditions Plan on Page 86 of the Packet, Locus is pre-existing nonconforming as to lot size and frontage. This undersized lot of record contains 1,610 SF in SR-1 where minimum lot size is 5,000 SF. The lot has triple frontage of less than the required 50’ on the lot line abutting Broadway (35.38’) to the northwest, the lot line abutting an unnamed variable width Way (45.02’) to the northeast, and the lot line abutting Front Street (36.69’) to the southeast. The Locus is also pre-existing, nonconforming as to parking, providing no parking spaces where one is required.

The historic dwelling, known as “The House of Lords”, said to have been built circa the mid-1700s, is a validly pre-existing, nonconforming structure as to setbacks and as to ground cover. The structure intrudes into the setbacks on the northeast, southeast, and southwest. Pursuant to Section 139-16.C(3), for lots abutting two or more streets or ways in the SR-1 district, the required 10’ front yard setback shall be maintained from any other street or way, whether constructed or not. The structure has a ground cover of approximately 796 SF for a ground cover ratio of 49.4% where maximum ground cover allowed is 30% (483 SF).

As shown on the Proposed Conditions Plan on Page 72 of the Packet, the proposed HVAC unit will be no closer to the southwesterly side yard lot line than the existing dwelling, and, as such, will not increase the nonconforming nature of the Dwelling or create any new nonconformities. The direct abutter and owner of 13 Broadway, who is most likely to be impacted by the proposed siting of the HVAC unit, submitted a letter of support for the proposed location of the unit, found on Page 97 of the Packet. Another abutter who lives across the street submitted an email expressing concern regarding noise pollution on Page 98 of the Packet. The Applicant's representative has responded to this particular concern in a subsequent email which is on Page 101 of the Packet.

Relief would be granted per 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.

UPDATE:
At the IPH on May 14th, the Board asked the Applicant to research other possible locations, or a smaller less intrusive unit, which would eliminate or decrease the proposed setback intrusion. The Applicant submitted the requested documentation which is on Pages 103-117 of the Packet.

No new correspondence from abutters has been received.

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

- 08-20 Nantucket Westmoor Farms, LLC (Appellant) 6 & 8 Old Westmoor Farm Rd. Swain REQUEST TO CONTINUE WITHOUT OPENING UNTIL AUGUST 13, 2020
Appellant brings an appeal, pursuant to M.G.L. c.40A, Sections 8 & 15 and Zoning By-law Sections 139-29.E and 139-31, of a decision by the Building Commissioner to issue a Cease and Desist Order
alleging zoning violations. Appellant requests that the Zoning Board of Appeals reverse the Order and render a decision that the Appellant's use of the property is in compliance with the Zoning By-law and consistent with the Planning Board’s July 2016 decision that special event uses on the property are not commercial in nature. Locus is situated at 6 & 8 Old Westmoor Farm Road, shown on Assessor’s Map 41 as Parcels 821 & 822, as Lot 22 upon Land Court Plan 13328-M and Lot 35 upon LCP 13328-N. Evidence of owner’s title is registered on Certificate of Title No. 21835 at the Nantucket County District of the Land Court. The site is zoned Residential Twenty (R-20).

- 10-20 Sarah F. Alger, Tr., 7/11 Nominee Trust 7 & 11 Squam Road Alger

Action Deadline September 9, 2020

NO KNOWN CONFLICTS

Applicants are seeking Special Permit relief pursuant to Zoning By-law Sections 139-30 and 139-33.A(1) to alter, extend, and change a pre-existing nonconforming use. The property is pre-existing nonconforming as to use in that it contains a total of three dwelling units, and as to setbacks. Specifically, the Applicant proposes to demolish and reconstruct one of the dwellings in a different but conforming location. The Locus is situated at 7 & 11 Squam Road, is shown on Nantucket Tax Assessor's Map 21 as Parcel 8, and as Parcel E on Land Court Plan 11019-E and Lot F1 on LCP 11019-F. Evidence of owner’s title is registered on Certificate of Title No. 24822 at the Nantucket County District of the Land Court. The site is zoned Limited Use General One & Three (LUG-1 & LUG-3) zoning districts.

As per above description, Applicant proposes to demolish and reconstruct one of the DUs upon the Locus. There are currently 6 structures – 3 of which are DUs – a game court and a pool upon the Locus. Two of the structures are nonconforming as to northerly side yard setbacks. The subject DU, known as the “Back Cottage”, contains 1,091 SF. The proposed enlarged reconstructed “Back Cottage” will contain 1,237 SF (146 SF larger) and will be conforming as to all setbacks. The relief is necessitated by virtue of the alteration of a pre-existing nonconforming use. The Locus is conforming as to lot area, frontage, and ground cover. No new nonconformities are being created and no pre-existing nonconformities are being made more nonconforming.

The Existing Conditions Plans are found on Pages 126-127 of the Packet.

The Locus has a mixed zoning with the shorefront being sited in LUG-3 and the main improved area being sited in LUG-1. Staff has included a zoning district overlay GIS map is AT THE END OF THIS STAFF REPORT. The lot area of 143,514 SF is well in excess of the required lot area of 40,000 SF for LUG-1. Maximum allowable GC of 7% of 143,514 would be 10,045 SF. The existing GCR is roughly 5.4% and the proposed GCR is roughly 5.8%.

Two prior 1997 ZBA & 2014 ZA Decisions are on Pages 129-139 of the Packet.

Relief would be granted per 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. […]
Applicant is requesting relief by Special Permit pursuant to Zoning By-law Sections 139-30, 139-33.A(1), and 139-17.C(7) to renovate a light tower and place it on a reconstructed foundation in conformance with applicable building codes and FEMA regulations. The structure is pre-existing nonconforming as to height and front and side yard setbacks. The proposed height is roughly 35 feet, for an approximately 2 foot vertical expansion within the front and side yard setbacks without coming any closer to the lot lines. The Locus is situated at 92 Hulbert Avenue, is shown on Tax Assessor’s Map 30 as Parcel 51, and upon Plan Book 8, Page 52. Evidence of owner’s title is recorded in Book 448, Page 322 on file at the Nantucket Registry of Deeds. The site is zoned Residential One (R-1).

The project consists of an alteration of the pre-existing nonconforming historic light house in the front northwest corner of the lot. They propose raising the building straight up and renovating and adding on to the existing foundation. They are not excavating and installing a new foundation but rather adding a few rows of concrete blocks on top of the existing foundation and then lowering the building back down. The alteration requires relief for a vertical expansion within the front and side yard setbacks and for excess in maximum allowed height in order to meeting building code and flood plain requirements.

As shown on the Existing Conditions plan on Page 150 of the Packet, the “Light Tower” is sited as close as 3.7’ from the westerly side yard lot line where minimum setback is 5’ and as close as 1.9’ from the northerly front yard lot line where minimum front yard setback is 10’. The footprint of the structure will remain unchanged. The existing TOF Elevation is 6.7’ with an existing height of 32.7’ measured from grade.

As shown on the Proposed Conditions plan on Page 151 of the Packet, the building will be raised roughly 2’ for an FFL of 9.5’ and a resulting height of roughly 35’ measured from grade. Maximum height allowed per Section 139-17.A is 30’.

Relief would be granted per 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.

AND 139-17.C(7) which reads:

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.
REQUEST TO WITHDRAW WITHOUT PREJUDICE

Applicant is requesting relief by Variance pursuant to Zoning By-law Section 139-32 for a waiver from the definition of “Tent” pursuant to Section 139-2.A, to allow for the erection of a tent for a period exceeding 30 days in a calendar year. Due to the COVID-19 crisis, the Applicant proposes to install a tent in early June through mid-October over the patio and/or lawn behind the Clubhouse. This area is already used for exterior dining and recreation and a portion of it would be tented for the 2020 season. The property is located at 10 Westmoor Lane shown on Tax Assessor’s Map 41, parcel 91, and as a portion of Lot 16 upon Land Court Plan 13328-K. Evidence of owner’s title is registered on Certificate of Title No. 21261 at the Nantucket County District of the Land Court. The site is zoned Residential 20 (R-20).

IV. OTHER BUSINESS (Votes may be taken)

051-03 Rugged Scott a/k/a Beach Plum 40B Holland / Posner / Haverty

DISCUSSION of implementing policy in fulfillment of obligation to allow abutting property owners non-resident family membership privileges and access to the common amenities (Clubhouse/Pool/Lawn/Tennis Court Facility) in Beach Plum Village, as per provisions in Section 3.2(o) regarding Management Issues in the original Comprehensive Permit and Section 9 of the “Settlement Agreement”.

TOWN OF NANTUCKET ZONING BOARD OF APPEALS - FILE NO. 051-03
DECISION ON APPLICATION OF RUGGED SCOTT LLC AS MODIFIED PURSUANT TO THE "AGREEMENT AND STIPULATION FOR ENTRY OF JUDGMENT" IN HOUSING APPEALS COMMITTEE DOCKET NO. 04-13

COMPREHENSIVE PERMIT
FOR THE RUGGED SCOTT LLC DEVELOPMENT

15, 19 Rugged Road and 6, 8 Scott's Way (aka Scott's Way)

3.2 (o) The clubhouse/pool/lawn/tennis court facility shown on the plans shall be available only to those residents of the site and their accompanied guests for personal use. The facility shall not be open to the public. The clubhouse may not function as a restaurant or bar as these terms are defined in the Nantucket Zoning Code. Use of the facility for functions with food and/or alcohol service may be allowed as an accessory use subject to all Zoning and other regulatory requirements. Memberships shall be provided to all residents on a fee schedule to be adopted by the Association provided, however, that any fee for an affordable unit is factored into the 30% maximum housing expense calculation. The Association shall establish hours of operation for the facility and guidelines for occupancy, noise, and lighting that preserve the rights of nearby residents to quiet enjoyment of their property, which shall be subject to final ZBA approval. Notwithstanding the above resident restriction, abutting property owners as shown on a map attached hereto as Exhibit D shall be allowed access to the facility subject to a
comparable fee structure and in accordance with rules and regulations established by the Association. A minimum of ten (10) non-resident family memberships shall be offered and a maximum of 30 non-resident family memberships may be allowed by vote of the Association.

SETTLEMENT AGREEMENT
Now come the parties in the case of Lisa P. Dias. et al. Plaintiffs. v. Town of Nantucket Zoning Board of Appeals. et al, Nantucket Superior Court Docket No. 04-15 ("the Superior Court case") and the case of Rugged Scott. LLC v. Nantucket Zoning Board of Appeals, Housing Appeals Committee Docket No. 04-13 ("the HAC case", and hereby agree that this Settlement Agreement settles all matters in dispute between the parties related to the property located at Rugged Road and Scotts Way, Nantucket, MA (hereinafter "the Property") and that this Settlement Agreement shall be enforceable as set forth below between the parties, and be forever binding upon the parties, their heirs, successors and assigns; the parties further acknowledge that they have been fully represented by counsel and informed of their rights, and that they have voluntarily entered into this Settlement Agreement. The parties hereby agree as follows:

9. Clubhouse/Pool/Tennis Courts Facility: The Decision clearly states allowable and prohibited uses and further establishes a procedure under which Rugged Scott and the Homeowners' Association must establish hours of operation for the facility, and guidelines for occupancy, noise, and lighting that preserve the rights of nearby residents to quiet enjoyment of their property, which shall be subject to final Board approval. Rugged Scott agrees to impose a requirement that the tennis and pool facilities will be closed no later than 7 PM and will operate only between May 1 and October 31 in any given year. Rugged Scott also agrees to comply with Condition 3.2 (o) of the Decision and in addition will present and discuss with a representative group of abutters its proposed guidelines on these matters before submitting them to the Board for approval.

This item has been intermittently on the Agenda since August 2019 with various lacuna due to ongoing attempts by interested parties to negotiate a mutually satisfactory solution. This is not a public hearing but rather a discussion of how to resolve a contentious issue which has, at times, reached an impasse. It is clear that all parties desire an amicable resolution but have had difficulty agreeing upon the terms. There has been a flurry of exchanges & proposals between the parties over the last several months. The most recent is a Memorandum of Understanding as to the terms, found on Pages 161 – 163 of the packet. This is followed by additional correspondence from the Beach Plum Property Manager, Atty. Haverty, and Atty. Hanley.

Staff has included supplemental materials related to the issuance of COs from Pages 173 – 194 of the packet. STAFF received a letter by email from an attorney representing the HOA members objecting to the MOU after posting the Packet. This is INCLUDED AT THE END OF THIS STAFF REPORT.

V. ADJOURNMENT (VOTE WILL BE TAKEN)
Sarah F. Alger, Tr.,
7/11 Nominee Trust

7 & 11 Squam Road

FILE NO. 10-20

Special Permit
Map Theme Legends

Zoning

- AH
- ALC
- CDT
- CI
- CN
- CTEC
- LC
- LUG-1
- LUG-2
- LUG-3
- MMD
- OIH
- R-1
- R-5
- R-10
- R-10L
- R-20
- R-40
- R-5
- RC
- RC-2
- ROH
- SOH
- SR-1
- SR-10
- SR-20
- VN
- VR
- VTEC
RUGGED SCOTT
BEACH PLUM VILLAGE
051-03

ADDITIONAL CORRESPONDENCE RECEIVED
AFTER PACKET POSTING
June 8, 2020

Ms. Lisa Botticelli
Acting Chair
Nantucket Zoning Board of Appeals
Two Fairgrounds Road
Nantucket MA 02554

RE: ZBA File No.051-03
Rugged Scott a/k/a Beach Plum

Dear Ms. Botticelli:

I write on behalf of several members of the Rugged Scott Owners’ Association Trust – both market and affordable owners ("Beach Plum owners") – who have contacted me regarding attempts to reach agreement over abutting neighbors’ use of Beach Plum community amenities. Such an agreement is required under the Comprehensive Permit, at Paragraph 3.2(o) and will be considered at your June 11 meeting.

Please be advised that any notion that such an agreement includes the assent of Beach Plum owners is incorrect; all with whom I have spoken feel strongly that the “Trust” purporting to represent their interests has done anything but. I have reviewed the copy of the Memorandum of Understanding (Packet pp. 161-163) and find it noteworthy that Josh Posner acts as signator for both RSOAT and the developer. There are no signatures of owners, as the only owner who was directly involved in these negotiations, Howard Edelman, resigned as a trustee and has not been replaced. While I have read and reviewed the legal niceties of the trust instrument unilaterally drafted and filed by Mr. Posner and his attorneys some fourteen years ago¹, and understand why Mr. Posner acts as he does, I do not agree that he can do so or that this Board intended he be allowed to unilaterally affect the Beach Plum owners’ property interests without their consent.

There are several instances in the record now before the Board – as reflected in the May 14 and June 11 packets – where it is implied that the Posner signature carries the endorsement of the Beach Plum owners. I write to make explicitly clear that it does not. Beach Plum owners understand the importance of concluding this matter, but want the Board to unmistakably note that before you now is an MOU executed by two parties, but

¹ It is noteworthy that this Comprehensive Permit did not require Board or Town Counsel approval of the establishment documents for the Association prior to recording, a common requirement in the majority of such permits.
not by the Beach Plum owners, an ignored third party whose property interests are directly implicated. Until that endorsement is obtained, Section 3.2(o) remains outstanding and unmet.

The record before the Board also clearly reflects the fact that the Beach Plum owners are being reasonable in regard to their position here. As Tucker Holland (who appears to be acting only in his capacity as an abutter, not as a town official) and other abutting neighbors correctly observed in the fifth paragraph of an August 2, 2019 letter to the Board (found at p. 144 of the May 14, 2020 packet), “the developer has retained control over the Homeowners’ Association.” The letter also refers to a statement by Mr. Posner that “he intends to wait until all the units are sold before implementing [Section 3.2(O)].” Clearly, Mr. Posner has controlled this issue without any deference to the interests of Beach Plum owners. He cannot, therefore, sign off on those interests. Though this point needs no further clarity, Attorney Paul Haverty provides it when he writes in a June 5, 2020 letter, submitted on behalf of Mr. Posner (found at pp. 168-169 of the June 11, 2020 packet), that “the Applicant (Posner) is happy to announce these differences have been resolved … and … the Applicant has entered into a Memorandum of Understanding … ” This MOU does not include the Beach Plum owners, notwithstanding any implication to the contrary.

Mr. Posner – who was balking on this issue as late as last August – has made it clear that he is in control and will brook no interference with his agenda. He is trying to leave the Beach Plum owners in his wake as he moves forward to close out this project. Mr. Posner’s conduct is unfair to the owners’ interests and inconsistent with the Comprehensive Permit terms. I therefore ask that the Board send Mr. Posner back to the Beach Plum owners to fairly negotiate their interests regarding this important issue.

I thank you and the Board for the continued efforts on this permit, and for your attention to this matter.

Very truly yours,

James S. Timmins

JST//bbg

cc. Paul Haverty, Esq.
    Marianne Hanley, Esq.
    George Pucci, Esq
    (All via email only)