I. APPROVAL OF THE MINUTES:
- May 10, 2018
- May 24, 2018
- June 14, 2018

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

- 051-03 Rugged Scott, LLC Rugged Scott a/k/a Beach Plum 40B Humphrey

NEW MODIFICATION REQUEST received on 6/28/2018:
Action Deadline July 18, 2018
The Applicant seeks a determination that a modification to the Comprehensive Permit, as amended, and the plans approved therewith, may be considered insubstantial pursuant to 760 CMR 56.05 (11)(a)(b), and as such, may be authorized by the Zoning Board of Appeals. The proposed modification pertains to approval of a revised landscape plan to allow installation of a cedar arbor on the front elevation of the home on Lot 35 (2 Cranberry Lane).

A letter dated April 20, 2017 was submitted to the Building Department signed by the Chair to approve Cottage Type Willow “M-3” for Lot 35, situated at 2 Cranberry Lane. The Applicant subsequently revised the building program upon the lot and requested, by letter received on March 1, 2018, a determination that the construction of an exterior spa upon the premises may be considered an insubstantial modification to the Comprehensive Permit, as amended, and the plans approved therewith, pursuant to 760 CMR 56.05 (11)(a)(b), and as such, may be authorized by the Board. At the ZBA meeting on March 8, 2018, the Board found this requested change to be insubstantial and granted approval to allow the exterior spa on Lot 35, as shown upon Site and Landscape Plans submitted in connection with the request. The HDC Compliance Coordinator passed the spa.
Applicant subsequently installed a cedar arbor adjacent to the parking area which led to the failed inspection by the HDC Compliance Coordinator. Applicant is therefore returning to the Board to validate this minor alteration which was not shown on the originally approved plans submitted with the Bldg. Permit on connection with the primary DU because the cedar arbor was not shown on the plans.

The Board needs to make a determination as to whether or not proposed modification to the construction program upon Lot 35 may be considered an insubstantial modification to the Comprehensive Permit, as amended, and the plans approved therewith, pursuant to 760 CMR 56.05 (11)(a)(b), and as such, may be authorized by the Board.

Section 760 CMR 56.05 (11)(a)(b), for your reference, reads in relevant part:

(11) Changes after Issuance of a Permit.

(a) If after a Comprehensive Permit is granted by the Board, including by order of the Committee pursuant to 760 CMR 56.07(5), an Applicant desires to change the details of its Project as approved by the Board or the Committee, it shall promptly notify the Board in writing, describing such change. Within 20 days the Board shall determine and notify the Applicant whether it deems the change substantial or insubstantial, with reference to the factors set forth at 760 CMR 56.07(4).

(b) If the change is determined to be insubstantial or if the Board fails to notify the Applicant by the end of such 20-day period, the Comprehensive Permit shall be deemed modified to incorporate the Change.
This is similar to many prior requests pertaining to minor architectural changes. The subject Lot 35 is a Market Rate lot and is among the last to be constructed.


Applicants request relief by Variance pursuant to Zoning By-law Section 139-32 from the minimum lot area requirement and maximum allowable ground cover ratio under Section 139-16 (Intensity Regulations) in order for the premises to be used as a residential building lot with up to 1,500 sq. ft. of ground cover. Applicants request additional relief by Special Permit pursuant to Section 139-16.C(1) to reduce 10 foot side and rear setbacks to 5 feet. The Locus, an undersized lot, is situated at 2 Dillon Court, is shown on Tax Assessor’s Map 67 as Parcel 884, and as Lot 35 upon Land Court Plan No. 38026-J. Evidence of owner's title is registered at Certificate of Title 20158 on file at the Nantucket County District of the Land Court. The site is zoned Residential Twenty (R-20).


Applicants request relief by Variance pursuant to Zoning By-law Section 139-32 from the minimum lot area and frontage requirements under Section 139-16 (Intensity Regulations) in order validate the premises as a residential building lot. The Locus, an undersized lot, is situated at 4 Dillon Court, is shown on Tax Assessor's Map 67 as Parcel 353, and as Lot 34 upon Land Court Plan No. 38026-J. Evidence of owner's title is registered at Certificate of Title 20158 on file at the Nantucket County District of the Land Court. The site is zoned Residential Twenty (R-20).

FROM JUNE 14 STAFF REPORT:

The two above applications are linked. Each lot was created under an Approval Required (“AR”) subdivision in 2009 when they were located in the Residential Commercial 2 zoning district. The applicant filed a Preliminary Plan on April 5, 2007 in advance of Annual Town Meeting where a zoning change article was on the Warrant. The zoning was changed to R-20 by virtue of passage of Article 33 at the April 9, 2007 ATM. The AR plan was approved in March 23, 2009. The zoning freeze expired on March 23, 2017.

The benefit of the 6 year zoning freeze, extended to 8 years by the 2010 & 2012 Permit Extension Act, has therefore lapsed rendering the lots subject to R-20 zoning provisions.

The Applicant seeks Variance relief to validate each lot as a residential buildable lot, substantially according to RC-2 Intensity Regulations and/or Section 139-33.E which would allow up to 1,500 SF of ground cover for an undersized lot of record. The front Lot 35, known as 2 Dillon Court, is currently vacant. The rear Lot 34, known as 4 Dillon Court, is currently improved with a 1,072± SF SDU built c. 1989.

In addition, applicant seeks Special Permit relief to reduce side and rear setbacks from 10 to 5 feet for 2 Dillon Court and to allow 30 foot front yard setback to be taken from Miacomet Avenue rather than from Dillon Court. This lot has double frontage. Pertinent By-law Sections are below:
Section 139-32.A - VARIANCE
The Board of Appeals shall have the power to grant upon appeal or upon petition, with respect to particular land or structures, a variance from the terms of this chapter where the Board of Appeals specifically finds that owing to circumstances relating to the 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 or purpose of such bylaw.

Section 139-16.A – INTENSITY REGULATIONS:

<table>
<thead>
<tr>
<th>District</th>
<th>Minimum Lot Size</th>
<th>Setback</th>
<th>Frontage</th>
</tr>
</thead>
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<tr>
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<tr>
<td>R-20</td>
<td>20,000 SF</td>
<td>30’</td>
<td>10’</td>
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</tbody>
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139-16.C(1) – Exception for yards
The Board of Appeals may grant a special permit to reduce the ten-foot side yard setback in R-5 and the ten-foot side and rear yard setback in R-10, SR-10, R-20 and SR-20 to five feet.

139-2.A Definitions - YARD, FRONT
The yard extending from the street line of a lot inwardly the required front-yard setback distance. For lots abutting two or more streets or ways, whether constructed or not, the required front yard setback shall be maintained from one street or way, and the required side yard setback shall be maintained from each other lot line, except in the R-1 and RC-2 Districts, where a minimum ten-foot side yard setback shall be maintained from any other street or way, whether constructed or not.

139-33.E(1)(b) – undersized lots of record
In the case of a lot containing at least 5,000 square feet, 1,500 square feet of ground cover or the amount determined in accordance with the maximum ground cover ratio requirement for the zoning district in which the lot is situated, whichever is greater.

UPDATE:
At the I PH on June 14th, applicant’s representative explained the history of the lots. In May 1989, Miriam Dillon, Edith Ray’s mother, purchased Lot 20 upon LCP 38026-D and which she owned until her death in June 2008. By virtue of her death, the Locus is now owned by Edith Ray and her brother Seth Dillon. Mr. Dillon does not live on island and does not want to retain his share. Edith and her husband have two sons, Travis Ray and Adam Ray, neither of whom have had the resources to buy out Mr. Dillon’s interest. Prior to the 2007 zoning change, the lot was in the RC-2 district. In 2007, M/M Ray filed an AR plan with the PB with #4 Dillon Ct. containing an existing house, #2 Dillon Ct. being vacant, and both served by Dillon Court. The subdivision was approved and a Land Court plan was issued showing these lots. Zoning was changed to R-20 after the plan was filed. The lots became nonconforming, but were protected for 8 years by the zoning freeze. However, the 8 year period expired in March 2017. M/M Ray were unaware of the significance of
Staff Report as of July 10, 2018

freeze. They had filed the plan with Land Court. The Town has been assessing the property as two separate lots. Dillon Court is shown as a roadway and the lots are shown as two separate lots on GIS. The Applicant is asking that the Board restore the lots to the position they were in last year whereby each would have been considered a valid building lot. The Applicants stated that there would be no 2nd DU's and no zoning sheds on either lot. Essentially, they seek to be able to build on #2 Dillon Ct. and validate both lots as buildable which they cannot do, because they are merged having not been conveyed into separate ownership. They are retroactively merged because the zoning freeze period of 8 years ran out.

There was discussion about the Permit Extension Act as to whether or not it would apply. The applicant's representative stated that he is not aware of any applicable case law re. the Permit Extension Act directly linked to subdivision and zoning freezes. The Board felt that this matter should be thoroughly researched as the applicant would benefit more from RC-2 zoning than the actual relief being requested.

STAFF obtained an opinion from Planning Director Andrew Vorce, which incorporates a Legal Opinion from Town Counsel. This is attached as a Memo at the end of this report.

NO NEW INFORMATION HAS BEEN PROVIDED BY THE APPLICANT.

- 19-18 ACK Crazy, LLC 9 West Chester Street Juraj Bencat
Action Deadline August 7, 2018 Sitting ET LB SM MJO JM At table: MP GT
Applicant is requesting Special Permit relief pursuant to Zoning By-law Sections 139-30.A and 139-33.A in order to alter the pre-existing nonconforming structure by demolishing the rear wing of the dwelling unit, renovating and/or replacing the existing foundation as needed, and reconstructing the wing in substantially the same footprint. The structure will be no closer to the westerly side yard lot line than the existing structure as a result of the proposed alterations, although there will be a vertical expansion within the setback. The Locus, an undersized lot, is situated at 9 West Chester Street, is shown on Nantucket Tax Assessor's Map 42.4.3 as Parcel 12, and as Lot 1 on Plan Book 17, Page 48 and Lot 4 on Plan Book 20, Page 1. Evidence of owner's title is recorded in Book 1618, Page 205. The site is zoned Residential Old Historic (ROH).

FROM JUNE 14 STAFF REPORT:
This was originally presented as a Zoning Administrator application but Staff determined that it warranted a public hearing given the scope of the project.

The Applicant proposes to alter the pre-existing nonconforming structure by demolishing the rear wing of the dwelling unit, renovating and/or replacing the existing foundation as needed, and reconstructing the wing in substantially the same footprint. The structure will be no closer to the westerly side yard lot line than the existing structure as a result of the proposed alterations and no new nonconformities will be created. The proposed project has been granted Historic District Commission approval by virtue of Certificate of Appropriateness No. 69609, as amended by No. 69858.

The Locus, as shown 2017 Building Location Plan by Blackwell (See Page 75; PACKET PART 2), is comprised of two undersized lots of record having combined lot area of 4,174 sq. ft. in the ROH where 5,000 sq. ft. is the minimum lot size. Specifically, Lot 1, shown upon Plan Book 17, Page 48, was created circa 1969 and Lot 4, shown upon Plan Book 20, Page 1, was created circa 1977. Lot 4 was carved out of the adjacent lot in connection with the encroachment of a portion
of the subject structure which extended over the shared lot line between Locus and 11 W. Chester (now shown as Lot 5 upon Plan File 42-C). The 1977 plan bears a note, “cover building encroachment”.

The property is improved with a 1,940 square foot single family dwelling for a ground cover ratio of 46.5% where 50% is maximum allowed. The structure is pre-existing nonconforming as to side yard setbacks being sited approximately 0.8 feet from the westerly lot line at its closest point where minimum side yard setbacks are 5 feet. The main mass of the dwelling structure is said to have been built circa 1800, with the subject back ell built sometime prior to the 1972 adoption of the Nantucket Zoning By-Law and, as such, is pre-existing nonconforming with respect to the intensity regulations pursuant to Section 139-16.A.

The proposal consists of a demolition of the rear wing, a replacement and/or renovation of the existing foundation, and construction of a new two story addition without any change in footprint or ground cover. The chimney on the south elevation will be shifted further away from the westerly lot line. The ridge height of the proposed new wing will increase from roughly 15’-10” to 21’-9”. Although the alteration and expansion will result in a vertical extension of the side yard setback intrusion, the structure as so altered shall be sited no closer to the westerly lot line than the existing structure.

Although the proposed alterations will result in a vertical expansion of the rear wing, a portion of which is sited within the westerly side yard setback, the change will not increase the nonconforming nature of the DU or the locus, and will not create any new nonconformities.

Staff recommends approval subject to the standard conditions below:

- The proposed alterations shall be performed in substantial conformity with the plans approved in conjunction with HDC approvals; and
- No exterior construction between Memorial Day and Labor Day.

UPDATE:
At the IPH on June 14th, applicant explained that he proposed to keep existing foundation of the art studio addition and raise up about 6 feet, fixing roof line so it matches historic main house. The Board asked to continue to July 12th to see HDC approved plans and photos and obtain clarification on whether the lots may be merged per the ZEO email dated March 14th (Page 68 of Packet). Applicant’s architect submitted the HDC materials and photos found on Pages 77 - 85 of the Packet.

- 22-18 James C. Herbert and Kathleen H. Herbert 70 Lovers Lane Guay Action Deadline September 12, 2018 Sitting ET LB SM MJO JM At table: MP GT Applicant seeks relief by Special Permit pursuant to Zoning By-law Section 139-33.A(2) to alter and expand the pre-existing nonconforming dwelling unit. Specifically, applicant proposes to build two additions which will increase the pre-existing nonconforming ground cover ratio upon the premises. In the alternative and to the extent necessary, Applicant requests relief by Variance to allow a roughly 150 sq. ft. increase to the pre-existing nonconforming ground cover. The Locus, a pre-existing nonconforming undersized lot of record, is situated at 70 Lovers Lane, is shown on Tax Assessor’s Map 79 as Parcel 22, upon Land Court Plan 36819-A and as Parcel A on Plan No. 2014-107. Evidence of owner's title is registered at Certificate of Title 24345 on file at the
Nantucket County District of the Land Court and recorded in Book 1618, Page 205 on file at the Nantucket Registry of Deeds. The site is zoned Residential Twenty (R-20).

**FROM JUNE 14 STAFF REPORT:**
See description of existing and proposed conditions and relief sought on Pages 10-11; Packet Part 2. The property is pre-existing nonconforming as to R-20 requirements for lot area, frontage, ground cover, and setbacks. Specifically, Locus is an undersized lot of record having a lot area of 12,015 SF (where minimum lot area is 20,000 SF), 20.15 feet of frontage (where minimum require frontage is 75 feet). The existing structure is a single family DU with attached garage. The existing ground cover is roughly 1,743 SF (14.5%) where maximum allowed pursuant to 12.5% GCR would be 1,501 SF. Applicant proposes to:

1) add an enclosed connecting portion from the DU to the garage; and
2) enclose a portion of the existing rear deck area - reducing the existing outside (unenclosed) deck area.

There will be no alteration to the attached garage 2-bay garage. The proposed in-fill additions will increase the ground cover by 149 SF, to 1,892 SF (15.8%). Accordingly, the applicant seeks Special Permit relief pursuant to Section 139-33.A(2), of the By-law, which reads:

An extension, alteration, or change to an existing structure or a new structure that will result in an increase in the pre-existing nonconforming ground cover ratio of a lot may be allowed through issuance of a special permit, provided that the special permit granting authority makes the following findings:

a) The increase in ground cover ratio will not be substantially more detrimental to the neighborhood than the existing nonconformity;  
b) The resulting ground cover ratio is consistent with the character of the surrounding neighborhood; and  
c) The extension, alteration, or change to the existing structure or the new structure is conforming to other dimensional requirements of this chapter.

The project benefits from HDC approval granted in February 2018. The additions will be compliant as to setbacks and height. The lot gained 2,015 SF of area upon acquisition of and merger with a paper road “Yard Sale” parcel (portion of Lovers Lane) in 2017. Materials related to this transaction are on Pages 20-29.  
There is a 45 SF shed sited on the lot line in the southeast corner. Staff included a GoogleEarth aerial image of the neighborhood on Page 19 of the Packet.  
STAFF RECOMMENDS APPROVAL with the relocation or removal of the shed out of the 10 foot side/rear setbacks.

**UPDATE:**
At the IPH on June 14th, the Board to continued the hearing and asked applicant to submit a chart to show that the proposed GCR would be consistent with surrounding neighborhood GCR, specifically providing a breakdown of lot sizes, ground cover in SF, and GCR percentage of surrounding lots shown on Google Earth image (Page 98 of Packet). Applicant has done so. The information is found on Pages 110 - 113 of the Packet. The Locus falls somewhere in the middle in terms of proposed ground cover, but is an undersized lot of record, unlike the majority of the lots.
included (11 of the 17 are conforming in lot size) in this analysis. The applicant provided data in 17 lots, all within the R-20 zoning district, including Locus.

- The average lot size = 26,920
  - The largest lot contains 64,904 SF
  - The smallest lot contains 10,000 SF
  - **Locus** contains 12,015 SF

- The average GCR = 10%
  - The highest GCR is 16.4% on a lot having 15,000 SF of lot area
  - The lowest GCR is 2% on a lot having 55,320 SF of lot area
  - **Locus** pre-existing nonconforming GCR is 14.5% and is proposed to increase to 15.7% on a lot having 12,015 SF of lot area

- The average total ground cover = 2,109 SF
  - The largest ground cover is 3,646 SF (12.2% GCR of 30,000 SF lot area)
  - The smallest ground cover is 1,130 SF (2% GCR of 55,320 SF lot area)
  - **Locus’** pre-existing nonconforming ground cover is 1,743 SF and is proposed to increase to 1,892 SF (15.7% GCR of 12,015 SF lot area)

- **23-18 Adam Ross and Emma Ross**
  - 50 Okorwaw Avenue
  - Beaudette
  - Action Deadline September 12, 2018
  - Sitting ET LB SM MJO JM
  - At table: MP GT

**REQUEST TO CONTINUE TO AUGUST 9th**

Applicants are seeking to vacate and rescind prior relief by Variance granted pursuant to Zoning By-law Section 139-32 in order to validate the lot as a nonconforming lot of record and a residential building lot. At the time the relief was granted, the 44,813 sq. ft. lot was undersized for the LUG-2 zoning district in which it was situated. When the zoning was changed to LUG-1 in 2017, the lot became conforming in all respects, rendering the need for relief obsolete. The Locus is situated at 50 Okorwaw Avenue, is shown on Tax Assessor’s Map 79 as Parcel 63, and as Lot 1 upon Plan No. 2012-82. Evidence of owner’s title is recorded in Book 1375, Page 117 on file at the Nantucket Registry of Deeds. The site is zoned Limited Use One (LUG-1).

**FROM JUNE 14 STAFF REPORT:**

In February 2012, the Town owned the Locus and was granted Variance relief (File No. 005-12) from the intensity regulations in Section 139-16 – specifically sought to waive LUG-2 lot size requirements (See Pages 108 – 120; Packet Part 2). The Town sought to divide the then existing lot into a separately marketable and buildable lot – having a lot area of 44,813 SF where minimum lot size is 80,000 SF – and to dispose of remainder portions of the lot as part of the Town “Yard Sale” program to be dedicated to roadway purposes. The existing lot owned by the Town was an undersized lot of record and therefore buildable, until the Town took the paper roads in order to dispose of them, at which point these paper roads merged with the existing undersized lot. The Town never had any intention of retaining these paper streets as part of the Locus and had always intended to dispose of them via the “Yard Sale”. However, because undersized abutting properties under common ownership merge by virtue of statute, the Town needed a Variance to effectively “un-merge” these paper street parcels in order to 1) dispose of them and 2) retain the buildability of the remainder larger lot.

The Variance was granted – after an appeal by and settlement with the abutter to the south at 51 Okorwaw – subject to the condition [...] that the shaded area on the attached “Exhibit A” remain minimally undisturbed and remain as a “green barrier” that will contain no structures.
The Perimeter Plan of record (Plan No. 2012-82) shows a “Proposed Building Restriction Line” which indicates a NO BUILD area. (STAFF has included this plan at the end of this report.) The condition was affirmed in the March 2013 Deed (Pages 102 – 106) from the Town to the owner/applicant, excerpted below.

Said Parcel is conveyed subject to a Proposed Building Restriction Line as shown on said Plan. The Grantee is not permitted to construct any structures in the area north of the Building Restriction Line (the “Restricted Area”) including not limited to any building, tennis court, swimming pool, shed, gazebo, asphalt or concrete pavement or parking area and fencing, except for sight pervious fencing which does not interfere with the passage of wildlife. Furthermore, the Grantee may maintain the Restricted Area in its vegetative state or landscape the Restricted Area.

At the time of the approval and execution of this deed, the property was still zoned LUG-2. The zoning was changed to LUG-1 when Article 85 passed at 2017 ATM. Therefore, the lot is now compliant with 44,813 SF where 40,000 SF is minimum lot size. However, there is a NO BUILD restriction on northeastern corner of this 5-sided polygon lot which impedes the owners’ ability to expand as they would be allowed to do by right, were the Variance rescinded.

The existing house has a ground cover of 1,745 SF. Maximum ground cover in LUG-1 is 7% which means the Locus could have up to 3,136 SF total, leaving the applicants another 1,391 SF of ground cover potential – subject to Board of Health / Septic regulations of 1 BR/10,000 SF. If the lot were still LUG-2, the lot would be allowed 4% or 1,793 SF, which would ostensibly allow a zoning shed (≤ 200SF) or a tiny 47 SF addition and other non-ground cover structures such as a pool or tennis court – none of which are permitted in the established “NO BUILD” area.

Essentially the Variance relief is obsolete as the lot is compliant. If the Variance is rescinded, then the condition “that the shaded area on the attached “Exhibit A” remain minimally undisturbed and remain as a “green barrier” that will contain no structures is de facto eliminated, allowing the owner to improve that area in a manner consistent with LUG-1 zoning provisions.

UPDATE:
STAFF received a request today (7/10) from the applicant’s representative to continue this matter to August 9th to allow for the applicants to seek approval from the Select Board to modify or rescind the deed restriction per the request of the ZBA at the IPH on June 14th, after hearing testimony from a concerned direct abutter. Staff has notified the abutter of this continuance and posted an updated Agenda to reflect this, as well.

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

- 26-18 Todd D. Johnston & Lesley L. Johnston (Owners) and Christina Rohrbeck (Applicant) REQUEST TO WITHDRAW WITHOUT PREJUDICE 3 Fulling Mill Road

Applicant is seeking Special Permit relief pursuant to Zoning Bylaw Section 139-33.A or, in the alternative Variance relief pursuant to Section 139-32 for a waiver of the ground cover ratio provisions in Section 139-16. Specifically, Applicant proposes to add about 200 square feet of ground cover to the dwelling. As a result of a zoning change from LUG-1 to LUG-3, the Locus became pre-existing non-conforming as to groundcover and lot size. The addition, which will be conforming as to all setback requirements, will increase the current ground cover from roughly 4.5% to 5%. The Locus is situated at 3 Fulling Mill Road, is shown on Tax Assessor’s Map 27 as Parcel 27, and as Lot 24 upon Land Court Plan 14311-T. Evidence of owner’s title is registered on
Certificate of Title No. 17748 at the Nantucket County District of the Land Court. The site is zoned Limited Use General 3 (LUG-3).

V. OTHER BUSINESS:

- ELECTION OF OFFICERS – (Chairman, Vice Chairman, and Clerk positions)

VI. ADJOURNMENT (VOTE WILL BE TAKEN)
EDITH ANN RAY
&
SETH H. DILLON,
TRUSTEES, SIXTY-TWO MIACOMET AVE. NOM. TR.

2 & 4 DILLON CT.

FILE NO.s
16-18 & 17-18

MEMO FROM
PLANNING DIRECTOR
MEMORANDUM

Date: July 6, 2018

To: Edward Toole, Chairman
    Nantucket Zoning Board of Appeals

From: Andrew V. Vorce, Director
       Planning & Land Use Services

Re: ZBA File No.s 16-18 & 17-18 – VARIANCE
    2 & 4 Dillon Court – Map 67, Parcels 884 & 353

The above referenced application was submitted to the ZBA and the hearing was opened on June 14, 2018. The Board inquired as to whether or not the zoning freeze of Residential Commercial Two (RC-2”) zoning relative to the Approval Required (“AR”) subdivision approval would benefit from the Permit Extension Act.

HISTORY OF PREMISES:
The Locus consists of Lots 34, 35, 36 (roadway lot) as shown upon Land Court Plan 38026-J, dated March 13, 2009. The lots are a portion of an approved subdivision of 60 & 62 Miacomet Avenue, originally known as Lots 19 & 20 upon LC Plan 38026-D:

- LC Plan 38026-D dated November 30, 1978 - Lots 19 & 20
- LC Plan 38026-I dated March 13, 2009 - Lots 32 & 33 subdivision of Lot 19 & 30
- LC Plan 38026-J dated March 13, 2009 - Lots 34, 35, & 36 subdivision of Lot 31

The applicant filed a Preliminary Plan a few days prior to the 2007 Annual Town Meeting (“ATM”). The zoning was changed from RC-2 to Residential 20 (“R-20”) by virtue of passage of Article 33 at the April 9, 2007 ATM. The Planning Board (“PB”), at its meeting on May 14, 2007, approved the preliminary subdivision plan entitled, "Preliminary Subdivision, 60 & 62 Miacomet Avenue", prepared for Richard L. & Edith Ann Dillon Ray by Charles W. Hart and Associates, Inc. and Site Design Engineering, LLC, and dated April 6, 2007 (PB File #7098). The plan was for a 4-buildable lot.
subdivision on 2 parcels of land located at 60 and 62 Miacomet Ave., shown on Map 67 as Parcels 352 and 353. The application for approval of a definitive subdivision plan was received by the PB on November 5, 2007. The PB, at its meeting on February 25, 2008, approved the 6 lot (4 buildable lots) Definitive Subdivision Plan (AR) for property located at 60 Miacomet Avenue to be known as Dillon Court. The AR plan was endorsed on March 23, 2009. The 8-year zoning freeze expired on March 23, 2017.

The Applicant is seeking Variance relief to validate each lot as a residential buildable lot, substantially according to RC-2 Intensity Regulations and/or Section 139-33.E which would allow up to 1,500 sq. ft. of ground cover for an undersized lot of record.

Section 139-16.A – INTENSITY REGULATIONS:

<table>
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Front Lot 35, known as 2 Dillon Court, is currently vacant, has a lot area of 5,301 sq. ft., and frontage of 113.84 feet onto Dillon Court.

Rear Lot 34, known as 4 Dillon Court, is currently improved with a 1,072± sq. ft. dwelling built c. 1989, has a lot area of 13,401 sq. ft., and frontage of 40 feet onto Dillon Court.

ZONING CHANGES & PROTECTIONS FOR LOTS & SUBDIVISION PLANS:

Chapter 40A, Section 6 reads in pertinent part:

[...]

If a definitive plan, or a preliminary plan followed within seven months by a definitive plan, is submitted to a planning board for approval under the subdivision control law, and written notice of such submission has been given to the city or town clerk before the effective date of ordinance or by-law, the land shown on such plan shall be governed by the applicable provisions of the zoning ordinance or by-law, if any, in effect at the time of the first such submission while such plan or plans are being processed under the subdivision control law, and, if such definitive plan or an amendment thereof is finally approved, for eight years from the date of the endorsement of such approval, [...].

Pursuant to the above-cited provisions regarding zoning protections for lots and subdivision plans, a property owner can protect land from future zoning changes by filing a preliminary plan even after the public hearing notice has been published in a newspaper but prior to the vote at ATM. Had the applicant either 1) conveyed one of the lots into separate ownership, or 2) submitted a Building Permit application to construct a dwelling on vacant Lot 35, BEFORE the expiration of the 8-year
definitive plan protection period on March 23, 2017, there would arguably be no need for Variance relief to waive the lot area and frontage requirements of R-20 zoning.

**The Permit Extension Act:**

While buildable Lots 34 & 35 would have been compliant with the intensity regulations of RC-2 zoning, they have been rendered nonconforming as to both lot size and, in the case of rear Lot 34, as to frontage upon expiration of the zoning freeze. The “Merger Doctrine” holds that substandard building lots held in common ownership must be combined to form a single lot that will meet or more closely approximate minimum lot area and frontage requirements of local zoning bylaw, or at the very least minimize nonconformities with the dimensional requirements of the zoning bylaw.

The ZBA inquired as to whether or not the Permit Extension Act would apply to the zoning freeze aspect of the AR subdivision approval. The Permit Extension Act established an automatic 4-year extension to certain permits involving the use or development of real property. “With limited exceptions, the Act automatically extends, for four years beyond its otherwise applicable expiration date, any permit or approval that was “in effect or existence” during the qualifying period beginning on August 15, 2008 and extending through August 15, 2012. The Act applies to regulatory approvals issued by local, regional or state entities that concern the use or development of real property. “Approval” is defined broadly to include any permit, certificate, license, certification, determination, exemption, variance, waiver, building permit, or other approval or determination of rights, and any order, except for enforcement orders.”

Planning Staff obtained the following legal opinion from Town Counsel for a similar matter:

You have asked whether the Permit Extension Act, contained in Section 173 of Chapter 240 of the Acts of 2010 (and extended by Section 74-75 of Chapter 238 of the Acts of 2012) (“Act”) operates to extend the zoning freeze that results from endorsement of a definitive subdivision plan under G.L. c.41, §81U or a so-called “approval not required” (“ANR”) plan under G.L. c.41, §81P. In my opinion, though there is no case law that definitively addresses this question, the Act does not extend such zoning freeze periods.

Pursuant to the Act, as extended, “certain regulatory approvals” that were in effect between August 15, 2008 and August 15, 2012 “shall be extended for a period of [4] years, in addition to the lawful term of the approval. The term “approval” is defined in the Act as follows:

…any permit, certificate, order, excluding enforcement orders, license, certification, determination, exemption, variance, waiver, building permit, or other approval or determination of rights from any municipal, regional or state governmental entity, including any agency, department, commission, or other instrumentality of the municipal, regional or state governmental entity, concerning the use or development of real property, including certificates, licenses, certifications, determinations, exemptions, variances, waivers, building permits, or other approvals or determination of rights issued or made under chapter 21, chapter 21A excepting section 16, chapter 21D, sections 61 to 62H, inclusive, of

---

1 Citation from Massachusetts House and Economic Development website  

chapter 30, chapters 30A, 40, 40A to 40C, inclusive, 40R, 41, 43D, section 21 of chapter 81, chapter 91, chapter 131, chapter 131A, chapter 143, sections 4 and 5 of chapter 249, or chapter 258, of the General Laws or chapter 665 of the acts of 1956, or any local by-law or ordinance.

Therefore, the extension provision of the Act clearly applies to affirmative licensing and permit decisions made by state and local boards, agencies and officials with respect to specific proposed development projects.

In my opinion, the definition of “Approval” would not encompass a zoning freeze. Pursuant to G.L. c.40A, §6, if a definitive plan is approved under the Subdivision Control Law, “the land shown on such plan shall be governed by the applicable provisions of the zoning ordinance or by-law, if any, in effect at the time [of submission of such plan]...for eight years from the date of the endorsement of such approval.” Similarly, if a plan is endorsed as ANR, the use of the land shown on such plan shall be governed by applicable provisions of the zoning ordinance or by-law in effect at the time of submission of such plan...for a period of three years from the date of endorsement by the planning board.” In either context, the “approval” is the Planning Board’s endorsement on the plan in question. The zoning freeze is a consequence of the approval but is not, in my opinion, an approval in and of itself.

Since the Act only extends “approvals” for a period of 4 years, and does not purport to extend the consequences of such approvals, it is my opinion that the Act does not have the effect of extending either of the zoning freeze periods that result from a planning board’s endorsement of a plan under either G.L. c.41, §81U or G.L. c.41, §81P.

Therefore, the Permit Extension Act relates to the subdivision approval/endorsement, not the “zoning freeze”. The “zoning freeze” is not an approval. The lots are effectively merged unless the Variance is granted.

Andrew V. Vorce
Director of Planning
SUBDIVISION PLAN OF LAND IN NANTUCKET
Schofield Brothers, Inc., Surveyors
November 30, 1978

MIACOMET
(A Great Pond)

MIACOMET POND

(400.00 wide)
AVENUE

Separate certificates of title may be issued for land shown hereon as lots 16...23.

By the Court.

July 3, 1979

Recorder

V.A.S.

Copy of part of plan
filed by

LAND REGISTRATION OFFICE
JULY 3, 1979
Scale of this plan 80 feet to an inch
R.L. Worsham, Engineer for Court
LOT 30 ON PLAN No. 32026-0 FILED
WITH CERTIFICATE No. 20,027 HAS BEEN SUBDIVIDED AND PLAN No. 32026-1
SHOWING SUCH CHANGES IS FILED WITH CERTIFICATE No. 20,028
FURTHER CERTIFICATES FOR SAID LOT 30 ON SAID EARLIER PLAN WILL NOT BE ISSUED UNLESS AUTHORIZED BY THE COURT (NOW LOTS 30 AND 31 )

LOT 30 ON PLAN No. 32026-0 FILED
WITH CERTIFICATE No. 20,027 HAS BEEN SUBDIVIDED AND PLAN No. 32026-1
SHOWING SUCH CHANGES IS FILED WITH CERTIFICATE No. 20,025
FURTHER CERTIFICATES FOR SAID LOT 20 ON SAID EARLIER PLAN WILL NOT BE ISSUED UNLESS AUTHORIZED BY THE COURT (NOW LOTS 30 AND 31 )
Subdivision of Lot 20
Shown on Plan 38026-D
Filed with Cert. of Title No. 9029
Registry District of Nantucket County

Separate certificates of title may be issued for land
shown hereon as Lots 30 and 31
By the Court

Deborah J. Patterson
Recorder

February 26, 2009

Copy of part of plan
LAND REGISTRATION OFFICE
Feb. 26, 2009
Scale of this plan 40 feet to an inch
T.C. Pottorff, Acting Engineer for Court

ST-091K
THIS PLAN FILED WITH CERTIFICATE NO. 20158

Attest: [Signature]
Assistant Recorder

LOT 19+70 ON PLAN No. 38026-D FILED WITH CERTIFICATE No. 20158 HAS BEEN SUBDIVIDED AND PLAN No. 38026-E SHOWING SUCH CHANGES IS FILED WITH CERTIFICATE NO. 7088.

FURTHER CERTIFICATES FOR SAID LOT 19+70 ON SAID EARLIER PLAN WILL NOT BE ISSUED UNLESS AUTHORIZED BY THE COURT (NOW LOTS 32+33).

LOT 31 ON PLAN No. 38026-H FILED WITH CERTIFICATE No. 20158 HAS BEEN SUBDIVIDED AND PLAN No. 38026-J SHOWING SUCH CHANGES IS FILED WITH CERTIFICATE NO. 20158.

FURTHER CERTIFICATES FOR SAID LOT 31 ON SAID EARLIER PLAN WILL NOT BE ISSUED UNLESS AUTHORIZED BY THE COURT (NOW LOTS 34, 35+36).
Subdivision of Lots 19 and 30
Shown on Plans 38026-D and 38026-H
Filed with Cert. of Title Nos. 9029 and 20158
Registry District of Nantucket County

Separate certificates of title may be issued for land shown hereon as Lots 32 and 33
By the Court.

Deborah L. Patterson, Recorder

September 8, 2009

Copy of part of plan
Land Registration Office
Sept. 8, 2009
Scale of this plan 40 feet to an inch
T.C. Pottier, Acting Engineer for Court
Hantschet Registry District
8 Oct. 18, 2009
RECEIVED FOR REGISTRATION
3 O'Clock 10 a.m. P.M.

THIS PLAN FILED WITH CERTIFICATE NO. 9088

Attest: Hermant Fevers
Assistant Recorder
SUBDIVISION PLAN OF LAND IN NANTUCKET
Charles W. Hart and Associates, Inc., Surveyors
March 13, 2009

MIACOMET (40.00 Wide) AVENUE

0.35

30.00

0.14

40.00

S.S.M.

5.13, d.h.c.b.

3.50

21

Plan No. 38026
Cert. No. 3029

DILLON CREDIT
14.84

11.94

36

35

3.35 = 40.00 =

5.00

30.00

35.00

Plan No. 38026
Cert. No. 3029

MIACOMET POND
(A Great Pond)

Subdivision of Lot 31
Shown on Plan 38026-H
Filed with Cert. of Title No. 20158
Registry District of Nantucket County

Separate certificates of title may be issued for land shown hereon as Lots 34, 35 and 36
By the Court.

September 8, 2009
Recorder

Deborah T. Patterson

Copy of part of plan 38026-I
 filed in
LAND REGISTRATION OFFICE
Sept. 8, 2009
Scale of this plan 40 feet to an inch
T.C. Pontbriand, Acting Engineer for Court
Nantucket Registry District
Sept. 18, 2009
RECEIVED FOR REGISTRATION
3 O'CLOCK 10 M P.M.

THIS PLAN FILED WITH CERTIFICATE NO. 20158

Attest: A. Ferreia
Assistant Recorder
STATEMENT OF CONDITIONS OF SUBDIVISION APPROVAL

RICHARD L. RAY and EDITH ANN RAY (also known as EDITH ANN DILLON RAY) (the "Rays"), and EDITH ANN RAY and SETH H. DILLON, as successor Trustees of SIXTY-TWO MIACOMET AVENUE NOMINEE TRUST under Declaration of Trust dated December 27, 2001, registered as Document No. 95339 at Nantucket Registry District (the "Dillon Trustees") (together, the "Owners") have submitted an application on November 5, 2007, to the NANTUCKET PLANNING BOARD (the "Planning Board") for approval of a definitive plan (the "Plan") of a subdivision of land, prepared by Charles W. Hart and Associates, Inc., dated November 5, 2007, revised through February 13, 2009, of land located on Miacomet Avenue, Nantucket, Massachusetts, consisting of land owned by the Rays by virtue of Certificates of Title Nos. 9088 and 23194 at Nantucket Registry District, and land now owned by the Dillon Trustees by virtue of Certificate of Title No. 20158 at Nantucket Registry District. The Plan shows four building lots numbered as Lots 32, 33, 34, and 35, and a new roadway called Dillon Court (the "Subdivision"). The Planning Board has approved the Plan by vote.
taken on February 25, 2008, and has endorsed the Plan on March 23, 2009, subject to the terms and conditions of subdivision approval herein set forth.

In consideration of the Planning Board’s approval of the Plan, the Owners hereby subject all of the land in the Subdivision to all conditions, terms and provisions set forth in the following:

(a) The Plan, as approved and endorsed pursuant to the Subdivision Control Law by the Planning Board.

(b) The Subdivision Control Law and the Planning Board’s Rules and Regulations Governing the Subdivision of Land which were in effect on April 5, 2007, the date of filing of the preliminary plan from which the Plan was derived.

(c) The Planning Board’s letter of approval dated February 25, 2008, a copy of which is attached hereto.

All of said conditions, terms and provisions shall constitute restrictions running with the land, and shall be enforceable in perpetuity by the Inhabitants of the Town of Nantucket, acting by and through the Planning Board.

We, Edith Ann Ray and Seth H. Dillon, hereby certify that we are the present Trustees of the Sixty-Two Miacomet Avenue Nominee Trust, which has never been amended nor revoked and is still in full force and effect; and that we have been duly authorized and directed to execute and deliver this instrument by the holders of
all of the beneficial interest under said trust, none of whom are under any disability to act.

Executed and sealed as of July 13, 2009.

Richard L. Ray

Edith Ann Ray, individually and as Trustee of Sixty-Two Miaomet Avenue Nominee Trust

Seth H. Dillon, as Trustee of Sixty-Two Miaomet Avenue Nominee Trust

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss. July 10, 2009

Then personally appeared the above-named Richard L. Ray and Edith Ann Ray, and acknowledged the foregoing instrument to be their free act and deed, before me,

Notary Public

My commission expires:
CONSENT OF MORTGAGEE

NANTUCKET BANK, a division of SOVEREIGN BANK, being the holder of a certain mortgage upon a portion of the Land, from the Rays to it, dated June 15, 2009, registered as Document No. 127511 at Nantucket Registry District, hereby consents to the imposition of the foregoing Statement of Conditions of Subdivision Approval upon the Land, and agrees that its said mortgage shall henceforth be held subject to and with the benefit of the provisions thereof.

Executed and sealed for and on behalf of Nantucket Bank, a division of Sovereign Bank, by Levin L. Waters V, its Senior Vice President, hereunto duly authorized, as of July 13, 2009.

NANTUCKET BANK, a division of SOVEREIGN BANK
By: Levin L. Waters V
Senior Vice President

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss.  July 9, 2009

Then personally appeared the above-named Levin L. Waters V, as Senior Vice President of Nantucket Bank, a division of Sovereign Bank, and acknowledged the foregoing instrument to be the free act and deed of Nantucket Bank, a division of Sovereign Bank, before me,

ARTHUR I. READE, JR.
Notary Public
Commonwealth of Massachusetts
1.1 Commission Expires
October 25, 2013

My commission expires:
ACCEPTANCE BY PLANNING BOARD

We, as a majority of the members of the Nantucket Planning Board, hereby accept and approve the foregoing Statement of Conditions of Subdivision Approval.

Dated: July 13, 2009

[Signatures]

Berny G Rector

John McLaughlin

Sylvia Howard

Nathaniel Lowell

Linda Williams

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss.

July 12, 2009

[Signature]

Sylvia Howard

Notary Public

My commission expires
Nantucket Planning Board

APPROVAL OF A DEFINITIVE SUBDIVISION PLAN (AR)

Richard L. & Edith Ann Dillon Ray Subdivision (Planning Board File #7098)

Parcel(s) 352 and 353 of Tax Assessors Map 67

Land Court Certificate 9,088, L.C. Plan 38026-D, Lot 19 and

L.C. Certificate 20,158, L.C. Plan 38026-D, Lot 20

February 25, 2008

The Nantucket Planning Board at its February 25, 2007 meeting voted 5-0 to APPROVE the six (6) lot (four (4) buildable lots) Definitive Subdivision Plan (AR) for property located at 60 Miacomet Avenue to be known as Dillon Court. The application for approval of this definitive subdivision plan was received by the Planning Board on November 5, 2007 and scheduled for an initial public hearing December 10, 2007. Due to scheduling conflicts beyond the control of the Board and the applicant, the public hearing was not opened and the application was continued to January 14, 2008 at which time the applicant elected to re-schedule in order to secure full Board membership to hear the application. On February 25, 2008 the Board opened the public hearing and acted on the application. Approval of the subdivision was based on the following documents:

- An application to the Planning Board for an Approval of a Definitive Subdivision Plan dated November 5, 2007;
- A set of plans entitled "Definitive Subdivision Plans for Dillon Court, 60 & 62 Miacomet Avenue, Assessor's Map 67, Parcels 352 & 353, Nantucket, Massachusetts", consisting of seven (7) sheets, scale as noted, prepared for Richard L. & Edith Ann Dillon Ray, prepared by Site Design Engineering, LLC., 11 Cushman Street, Middleboro, MA and Charles W. Hart and Associates, Inc., Professional Land Surveyors, 8 Williams Lane, Nantucket, all dated November 5, 2007;
- A letter of submittal by Daniel C. Mulloy, PE of Site Design Engineering, LLC., 11 Cushman Street, Middleboro, MA 02346;
- A list of "Waiver Requests" by Site Design Engineering, LLC, dated November 5, 2007;
- A "Stormwater Operation and Maintenance Plan" by Site Design engineering, LLC, dated November 5, 2007;
- A "Drainage Analysis" by Site Design Engineering, LLC, dated November 5, 2007;
A letter of Preliminary Plan Approval dated May 14, 2007 to Mr. Mulloy from the Nantucket Planning Board Vice-Chairman Francis T. Spriggs;

Representation and testimony received in connection with the public hearing of February 25, 2008. Minutes of this meeting are on file with the Planning Board;

Other assorted documents that are on file with the Planning Board under the Rules and Regulations Governing the Subdivision of Land for Nantucket Island, Massachusetts.

The Applicant proposes to divide two (2) existing parcels into four building lots and one roadway lot. The plan is based on the Preliminary Subdivision Plan of May 14, 2007 and the six (6) recommendations made by the Planning Board:

1. That all of the lots shown on the Preliminary Plan shall be for residential purposes only;
2. That the buildable lots shall be restricted to one (1) dwelling unit each;
3. That all buildable lots shall be connected to municipal sewer;
4. That the applicant shall be permitted to submit a Definitive Plan for a Major Residential Development (MRD). The Planning Board encourages this type of plan due to the proximity of the property to Miacomet Pond;
5. That the interior roadway(s) shall be a minimum width of sixteen (16) feet and based on the number or lots and/or dwellings served, the Rural Road Alternative may be permitted; and
6. That the roadway layout shall be permitted to be reduced to thirty (30) feet in width.

The land is zoned RC-2 and LUG-2 and while the applicant does not propose to use the Major Residential Development Bylaw at this time, the Rural Road Alternative under the subdivision regulations will be employed. The applicant proposes minimal road improvements in exchange for reduced density and a self-imposed restriction prohibiting secondary dwellings.

Approval of the subdivision is granted conditionally upon the aforementioned documents, compliance with the Planning Board’s Rules and Regulations Governing the Subdivision of Land (as amended through December 20, 1999), and on the following additional requirements and agreements:

1. That the applicant be granted waivers to the following Sections of the Rules and Regulations Governing the Subdivision of Land on Nantucket Island:

   2.06a(11) - SITE ANALYSIS REPORT AND MAP
   Waiver GRANTED as the project will not adversely affect any environmentally sensitive areas or create any traffic safety issues on abutting roadways due to the limited number of structures existing and proposed;

   2.06b(14) – LANDSCAPE PLAN
   Waiver GRANTED as the plans adequately indicate the required street trees negating the need of a separate landscape plan;

   2.06b(18) – ON SITE DISPOSAL OF BRUSH AND TREES

Dillon Court Decision 02-25-08
Waiver GRANTED as those trees to be removed will be chipped for use in landscape materials and therefore need not be buried;

2.06e – STAKING OF SUBDIVISION
Waiver GRANTED as the location of the proposed roadway is easily determined at the site as there is an existing driveway in its place;

4.03a(1) – STREETS
Waiver GRANTED to allow the use of a rural road alternative under Section 4.05;

4.03e – MINIMUM DESIGN STANDARDS
Waiver GRANTED to allow a R.O.W. of thirty (30) feet and a roadway width of twelve (12) feet;

4.05 – STREET CONSTRUCTION
Waiver GRANTED to allow the roadway to be constructed under the requirements of a rural road alternative with a width of twelve (12) feet;

4.09 – SHOULDERS
Waiver GRANTED to reduce the required four (4) foot shoulder width to two (2) feet for the stabilized gravel road;

4.16 - LANDSCAPING
Waiver GRANTED so that landscape plan is not required due to street tree design;

4.18 – SIDEWALKS
Waiver GRANTED so that no sidewalk is required;

4.19 – BICYCLE PATHS
Waiver GRANTED so that no bicycle path is required;

4.20 – STREET LIGHTS
Waiver GRANTED so that no street lights are required;

4.22 – CURBING AND BERMSTM
Waiver GRANTED as the roadway will be constructed with gravel and utilizes an open drainage system that will not function properly with curbing and berms;

4.24 - DRIVeway APRONS
Waiver GRANTED to allow aprons to be constructed of the same material as the roadway and the aprons may be ten (10) feet in width;

5.04 - ON SITE DISPOSAL OF BRUSH AND TREES
Waiver GRANTED to allow the applicant to chip all brush and trees and therefore negate the need for a designated area of disposal.
2. The applicant has represented and the Planning Board has approved this subdivision on the basis that the subject lots will not be further subdivided without modification approval from the Board. It is therefore understood and agreed by the applicants that they and any subsequent owners will not be eligible for Approval Not Required (ANR) endorsement for division of the lots as shown on the plan, except for minor lot adjustments that do not create any additional building lots;

3. The applicant and Planning Board agree that in exchange for no second dwelling units, the interior roadway may be twelve (12) feet in width with a thirty (30) foot Right of Way and that the driveway aprons may be ten (10) feet in width;

4. That a final set of definitive plans be submitted within ninety (90) days from the date this decision is filed with the Town Clerk (April ____, 2008);

5. That recorded copies of all legal documents (Statement of Conditions, Grant of Easements for drainage, and Covenant) shall be presented to the Planning Board prior to issuance of a building permit for Lot 3 as shown on the plans;

6. That the roadway and associated infrastructure improvements not commence until the definitive plan has been endorsed by the Planning Board;

7. That all required infrastructure improvements be completed within two (2) years from the date of definitive plan endorsement. The Planning Board may grant extensions of this deadline without holding a public hearing.

(Note: Signature page follows)
On February 25, 2008 the Planning Board voted 5-0 to CLOSE the public hearing, APPROVE this subdivision and ENDORSE this decision.

Sylvia Howard APPROVED
Barry Rector APPROVED

Francis T. Spriggs APPROVED
John McLaughlin APPROVED

Nathaniel Lowell APPROVED

COMMONWEALTH OF MASSACHUSETTS

Nantucket, SS

April 09, 2008

Then personally appeared Nathaniel Lowell, one of the above-named members of the Planning Board of Nantucket, Massachusetts and acknowledged the fore-going instrument to be his/her free act and deed before me.

Vanessa Motte Notary Public

March 22, 2013 Date my Commission Expires
The data on this map represents the efforts of the Town of Nantucket staff to record and compile pertinent geographical and related information utilizing the capabilities of the Nantucket Geographic Information System (GIS). The GIS staff maintains an ongoing program to record and correct errors in these data that are brought to its attention. The Town of Nantucket makes no claims as to the absolute validity or reliability of these data or their fitness for any particular use.

The data on this mapsheet is based primarily upon interpretation of April, 1998 aerial photography. It was compiled to meet the ASPRS Standard for Class I Map Accuracy for 1"=100' scale maps.

The parcel boundaries are based primarily upon the Tax Assessor’s data through December, 2005. Nantucket governmental agencies will not necessarily approve applications based solely on GIS data. Applicants for permits and licenses must inquire of the relevant agency for applicable requirements.

The presence of information of this mapsheet does not necessarily imply public right-of-way or the right of public access.

Please send identification of any errors and corresponding corrections to:

GIS Coordinator
Town of Nantucket
22 Federal Street
Nantucket, MA 02554

1 inch equals 75 feet

Article 33
From R-C 2 and LUG - 2 to R-2
TOWN OF NANTUCKET
2007 Annual Town Meeting

7:00 PM, Monday, April 9, 2007
Nantucket High School
Or, to take any other action related thereto.

(Board of Selectmen for Planning Board)

PLANNING BOARD MOTION: Moved that the Zoning Map of the Town of Nantucket be amended by placing the following properties, currently located in the Residential Commercial-2 (RC-2) district in the Residential-10 (R-10) district:

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<th>Parcel</th>
<th>Number</th>
<th>Street</th>
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ARTICLE 33

(Zoning Map Change: Miacomet Avenue and Otokomi Road)

To see if the Town will vote to amend the Zoning Map of the Town of Nantucket by taking the following actions in regard to property on Miacomet Avenue by placing the following properties, zoned both Residential Commercial-2 (RC-2) and Limited Use General-2 (LUG-2), in the Residential-2 (R-2) district:
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<th>Map</th>
<th>Parcel</th>
<th>Number</th>
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All as shown on a map entitled “Warrant Article 33, MGL 41-81D Master Plan, Zoning Change: Miacomet Avenue” dated January, 2007 on file at the office of the Town Clerk.

Or, to take any other action related thereto.

(BOARD OF SELECTMEN FOR PLANNING BOARD)

**PLANNING BOARD MOTION:** Moved that the Zoning Map of the Town of Nantucket be amended by placing the following properties, zoned both Residential Commercial-2 (RC-2) and Limited Use General-2 (LUG-2), in the Residential-2 (R-2) district:

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The following is a summary of the articles called, and the vote taken by the 2007 Annual Town Meeting held at the Nantucket High School, Mary P. Walker Auditorium, 10 Surfside Road, on April 9, 2007.

Monday, April 9 – Meeting called to order at 7:14 PM. / Unanimous vote to recess until Tuesday, April 10, 7 PM at 10:33 PM. There were 469 in attendance.

Tuesday, April 10 – Meeting called to order at 7:11 PM. / Unanimous vote to recess until Wednesday, April 11, 7 PM at 10:40 PM. There were 366 voters in attendance.

Wednesday, April 11 – Meeting called to order at 7:13 PM. There were 295 voters in attendance. 2007 Annual Town Meeting was dissolved at 11:20 PM, on April 11, 2007.

**Article 1:** Receipt of Reports (Not Called) Adopted by Unanimous Voice Vote

**Article 2:** Appropriation: Unpaid Bills (Not Called) Adopted by Unanimous Voice Vote

**Article 3:** Appropriation: Prior Year Articles (Not Called) Adopted by Unanimous Voice Vote

**Article 4:** Revolving Accounts: Annual Authorization (Not Called) Adopted by Unanimous Voice Vote

**Article 5:** Appropriation: Reserve Fund (Not Called) Adopted by Unanimous Voice Vote

**Article 6:** FY 2007 Budget Transfers (Not Called) Adopted by Unanimous Voice Vote
**Article 22:** Community Preservation Committee (Not Called) Adopted by Unanimous Voice Vote

**Article 23:** Appropriation: Municipal Electric Aggregate (Called) Adopted by Unanimous Voice Vote

**Article 24:** Land Bank Financing (Called, Call Withdrawn) Adopted by Declared 2/3 Majority Voice Vote

**Article 25:** Zoning Bylaw Amendment: Establishment of Harbor Overlay District (Not Called) Referred Back to Committee

**Article 26:** Zoning Bylaw Amendment: Harbor Overlay District – Nantucket Harbor (Not Called) Referred Back to Committee

**Article 27:** Zoning Bylaw Amendment: Madaket Harbor (Not Called) Referred Back to Committee

**Article 28:** Zoning Bylaw Amendment: Island Perimeter Restrictions (Called) Adopted by Declared 2/3 Majority Voice Vote.

**Article 29:** Zoning Bylaw Amendment: Permitted Uses (Called) Not Adopted by Majority Voice Vote

**Article 30:** Zoning: Alteration of Town and Country Designations/Vicinity of Polpis Road and Monomoy Road (Not Called) Adopted by Unanimous Voice Vote

**Article 31:** Zoning Map Change: 3M Subdivision/Doc Ryder Drive, Hatch Circle, etc. (Called) Adopted by 2/3 Majority Voice Vote

**Article 32:** Zoning Map Change: 3M Subdivision/Farm View Drive and Golf View Drive (Called) Adopted by 2/3 Majority Voice Vote

**Article 33:** Zoning Map Change: Miacomet Ave. (Called) Adopted by Handcount Vote: YES – 276; NO – 43 (2/3 = 211)

**Article 34:** Zoning Map Change: Otokomi Road/Technical Correction (Called) Adopted by Declared 2/3 Majority Voice Vote

**Article 35:** Zoning Map Change: Miacomet Ave. and Otokomi Road/Technical Correction (Called) Adopted by Unanimous Voice Vote

**Article 36:** Zoning Map Change: Miacomet Ave. (Called) Adopted by 2/3 Majority Voice Vote

**Article 37:** Zoning Bylaw Amendment: Residential Parking (Called)