



ZONING BOARD OF APPEALS

2 Fairgrounds Road
Nantucket, Massachusetts 02554
www.nantucket-ma.gov

Commissioners: Ed Toole (Chair), Lisa Botticelli (Vice chair), Susan McCarthy (Clerk), Michael J. O'Mara, Kerim Koseatac
Alternates: Mark Poor, Geoff Thayer, Jim Mondani

~~ MINUTES ~~

Thursday, January 10, 2019

Public Safety Facility, 4 Fairgrounds Road, Community Room –1:00 p.m.

Called to order at 1:07 p.m. and Announcements made.

Staff in attendance: Eleanor Antonietti, Zoning Administrator; T. Norton, Town Minutes Taker
Attending Members: Toole, McCarthy, O'Mara, Koseatac, Poor, Thayer, Mondani
Absent: Botticelli
Late Arrivals: None
Early Departures: None

Agenda adopted by unanimous consent

I. APPROVAL OF MINUTES

1. October 11, 2018: **Motion to Approve as amended.** (made by: O'Mara) (seconded by: Koseatac) Carried unanimously
2. December 13, 2018: **Motion to Approve.** (made by: O'Mara) (seconded by: Koseatac) Carried unanimously

II. OLD BUSINESS

1. 19-18 ACK Crazy, LLC 9 West Chester Street Bencat/Cohen
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).

Voting Toole, McCarthy, O'Mara, Thayer, Mondani
 Alternates Poor
 Recused None
 Documentation File with associated plans, photos and required documentation
 Representing Steven Cohen, Cohen & Cohen Law P.C.
 Public Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP, Breed family
 Discussion (1:10) **Cohen** – This is pre-existing, non-conforming and to be rebuilt taller but in same location. He & Attorney Reade have worked out an agreement with the abutter; a copy of that summary was provided to the Zoning Administrator for inclusion in the file. He believes that satisfies the information and conditions the Board was looking for.
Reade – Concur the protocol of construction has been worked out. His clients now support granting the relief.
 Consensus is good with the letter as it is.
Toole – We've spoken of other conditions.
McCarthy – Standard restrictions should be added for Memorial Day to Labor Day with a caveat that the parties have agreed to different dates; that doesn't change our standards.
Toole – They must follow the construction protocol as laid out regarding the foundation.
Antonietti – There were issues with the existing foundation.
Thayer – Asked if the issue with the lots being merged had been worked out.
Cohen – Yes.
Antonietti – The ZBA construction restriction conflicts with that agreed to by the parties.
Toole – The letter says no exterior construction between June 15 to October 1. We normally request Memorial Day to Labor Day; we could change the dates to be from Memorial Day to October 1 only because of agreement between the parties.
Cohen – He'd rather the agreement not be attached to the determination; it should be in the file and referenced.
Reade – Concur. They have to comply with the contractual arrangement of the agreement.
 Motion **Motion to Grant the relief with the conditions as discussed.** (made by: Thayer) (seconded by: O'Mara)
 Vote Carried 5-0

2. 23-18 Adam Ross and Emma Ross 50 Okorwaw Avenue Beaudette
CONTINUED TO FEBRUARY 14, 2019

3. 46-18 TLJ Properties, LLC 18 Gladlands Avenue Alger
REQUEST TO WITHDRAW WITHOUT PREJUDICE

Voting Toole, McCarthy, O'Mara, Koseatac, Mondani
Alternates Poor
Recused Thayer
Documentation File with associated plans, photos and required documentation
Representing Sarah Alger, Sarah F. Alger P.C.
Public None
Discussion (1:20) None
Motion **Motion to Accept the withdrawal without prejudice.** (made by: Koseatac) (seconded by: O'Mara)
Vote Carried 5-0

4. 50-18 Milton C. Rowland and Roberta M. Rowland 2 Cottage Court Brescher

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

Voting Toole, McCarthy, O'Mara, Koseatac
Alternates Poor, Thayer, Mondani
Recused None
Documentation File with associated plans, photos and required documentation
Representing John Brescher, Glidden & Glidden
Milton Rowland, owner

Public None
Discussion (1:21) **Rowland** – We want a garage/studio so will waive the notion of having appliances in the structure. This will require a fire wall on the wooden portion abutting the property line; explained how that will be done. There is no demolition proposed except for the wall between the two structures; there will be a little foundation in-fill work. He has talked to the neighbor, Ms. Johnson and she now understands the work being done; she said she has no more concerns.
Toole – Asked if the board wants to see a letter from the neighbor.
Discussion about whether or not it is possible to reduce the depth of the fire wall and the distance of the foundation from the property line.
Toole – The documentation should match what is being done.
Rowland – There is no change to the foundation.
McCarthy – The Burnsides submitted a letter of objection to the work being done.
Rowland – They abut an upper corner of the property away from where this work is taking place.
Mondani – Asked if a letter from the Burnsides should be required since the Board is asking for a letter from Ms. Johnson.
McCarthy – Their complaint was about noise during the summer for work on the house; Mr. Rowland doesn't need to go onto their property to get work done.
Brescher – On 79R Orange Street there is an exception, per MGL 266-2B, to go onto the abutters property to make repairs. Asked if the letter from Ms. Johnson could be made part of the decision and submitted into the record versus holding this up further.
Thayer – That law is geared more toward maintenance of the property, not new construction.
Discussion about Ms. Johnson's letter rescinding her objections and granting permission for the applicant to go onto her property being in the record before making a decision or to render the decision contingent upon the letter being in the file.
Rowland – Asked if the final decision is contingent upon a signed letter.
Toole – That depends on if she has additional concerns that are strong enough. Noted that she wrote a letter of objections; this letter would counter that letter. We don't know that she doesn't object; the applicant is saying that she has no objections.
McCarthy – She feels the letter would confirm Ms. Johnson's understanding of what is happening.
Brescher – Asked if there are other concerns of the Board beyond the letter.
Toole – Asked about the lack of gutters on the property-line side.
Rowland – There are no gutters on the property-line side and he has no intent to add them.

Thayer – One survey shows the distance of the forward building to property line and another has both the front and back distances.

Rowland – No change will be made to the distance from the property line on either building.

O'Mara – Two concerns of Ms. Johnson remain active: run off from building and the continued active right of way.

Toole – We can't do anything about water run off the roof.

McCarthy – He's not adding roof.

Toole – Asked about the right of way.

Rowland – All parking is in the middle of the lot near the main house.

Thayer – He still wants something in the file; it'll be cleaner.

Toole – When we have a legitimate objection from a neighbor, and we haven't had a chance to talk to her, we want something in the file. Otherwise we rely upon the appeal process. This letter puts that to rest.

Antonietti – She responded to Ms. Johnson and sent her the full application but did not hear back.

Consensus agrees a letter of acknowledgement from Mrs. Johnson in the file is best practice.

Antonietti – Read MGL 260-2B regarding going onto a neighbor's property for maintenance.

Motion
Vote

Motion to Continue to February 14, 2019. (made by: Mondani) (seconded by: McCarthy)
Carried 5-0

III. NEW BUSINESS

1. 01-19 Steven W. Russo, Tr., 43A Union Street Trust 43A Union St Reade
REQUEST TO CONTINUE, WITHOUT OPENING, TO FEBRUARY 14, 2019

2. 02-19 DWZ, LLC 5 Mill Street Alger
Applicant is requesting Special Permit relief pursuant to Zoning By-law Sections 139-7(a), 139-30, and 139-33.A to convert a pre-existing nonconforming shed into a home office. Applicant also seeks Special Permit relief, or in the alternative Variance relief pursuant to Section 139-32, to relocate a pre-existing nonconforming air conditioning unit, currently sited as close as 1.9' from the rear yard property line, to a new location as close as 3.8' from the side yard property line, where minimum side/rear yard setback is 5'. Locus is situated at 5 Mill Street, is shown on Assessor's Map 42.3.3 as Parcel 79, as Lot 1 upon Land Court Plan 17016-B. Evidence of owner's title is registered on Certificate of Title No. 25828 at the Nantucket County District of the Land Court. The site is zoned Residential Old Historic (ROH).

Voting Toole, McCarthy, O'Mara, Koseatac
Alternates Poor, Thayer, Mondani
Recused None
Documentation File with associated plans, photos and required documentation
Representing Sarah Alger, Sarah F. Alger P.C.
Public None

Discussion (1:55) **Alger** – The shed in the back had been used informally as an office; the new owner applied for a permit to change the use of the shed to an office. The permit was issued for the change of use and work done but it was flagged at the time of the inspection. Only interior work was proposed. The three direct abutters submitted letters of support. There is a non-conforming air conditioning unit (A/C) moved from the rear setback into side setback and is now about 3 feet from the property line, which is less non-conforming; it could be moved, but her clients prefer not to. She has evidence that the A/C was there 10 years ago.

Toole – The A/C should be moved out of the setback.

McCarthy – Even if it was in the rear setback 10 years ago, it was since moved.

Mondani – Moving the A/C would not be a hardship. We have proof the shed was there 10 years ago.

Alger – The shed was constructed in the 1940s; she is here for a special permit to officially change the use.

Consensus has no concerns with the change of use.

Toole – There are options to move the A/C outside the setback. He wants to be consistent about A/C.

Alger – Withdrew the request per the A/C. She'll remove the A/C and file a new as built.

Motion
Vote

Motion to Approve withdrawal of the A/C from the application. (made by: Koseatac) (seconded by: O'Mara)
Carried unanimously

Motion
Vote

Motion to Grant the Special Permit. (made by: Koseatac) (seconded by: McCarthy)
Carried unanimously

3. 03-19 Estate of Nikki S. Toole; Edward S. Toole, Tr., ECMJ Nominee Trust; Sarah F. Alger, Tr., 15 Sandsbury Nominee Trust
11, 13, and 15 Sandsbury Road Alger
REQUEST TO CONTINUE, WITHOUT OPENING, TO FEBRUARY 14, 2019

IV. OTHER BUSINESS

1. Antonietti – The Planning Board is meeting Thursday, January 24, 2019 at 5 p.m. in the 4 Fairgrounds Road Conference Room to discuss the zoning bylaws on the 2019 Warrant for Town Meeting. If more than three Board member plan to go, she will have to know so that she can post a meeting.
Toole – Asked her to post it as a ZBA meeting just in case.
2. Antonietti – The Ethics training should be completed by January 31, 2019.
3. Toole – Hopefully we'll get new material for the Surfside Crossing 40B hearing next week.

V. ADJOURNMENT

Motion to Adjourn at 2:11 p.m. (made by: Koseatac) (seconded by: Thayer) Carried unanimously

Sources used during the meeting not found in the files or on the Town website:

1. 2019 Town Warrant

Submitted by:

Terry L. Norton