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

Staff in attendance:  Leslie Snell, Deputy Director Planning
Attending Members:  McCarthy, Botticelli, O’Mara, Poor, Thayer, Mondani
Absent:  Toole,  Koseatac

Agenda adopted by unanimous consent

I. APPROVAL OF MINUTES
1. December 12, 2019: Motion to Approve.  (made by: Mondani)  (seconded)  Carried unanimously
2. January 9, 2020:  Motion to Approve.  (made by: Mondani)  (seconded)  Carried unanimously

II. OLD BUSINESS
1. None

III. NEW BUSINESS
1.  03-20  Randolph G. Sharp, Jr., Trustee, Randolph G. Sharp, Jr. Trust   76 Polpis Road  Cohen
Applicant is requesting modification of prior Special Permit relief pursuant to Zoning By-law Section 139-33.A. Said relief, granted in ZBA Decision 11-19, approved the demolition and reconstruction of a dwelling structure having 2,293± SF with the ability to retain the pre-existing nonconforming ground cover ratio of 3.6% where 3.0% is allowed. Applicant now seeks to construct a dwelling and detached garage/ancillary structure with the previously granted ability to retain the pre-existing nonconforming ground cover ratio of 3.6%.  Locus is situated at 76 Polpis Road, shown on Assessor’s Map 43 as Parcel 177 and as Lot 2 upon Plan Book 19, Page 126. Evidence of owner’s title is recorded in Book 1691, Page 93 on file at the Nantucket County Registry of Deeds. The site is zoned Limit Use General-3 (LUG-3).

Voting  McCarthy, Botticelli, O’Mara, Thayer, Mondani
Alternates Poor
Documentation File with associated plans, photos and required documentation
Representing Steven Cohen, Cohen & Cohen Law P.C.
Public None
Discussion  Cohen – Previously before ZBA for pre-existing, non-conforming structure.  Asking to split the structure into two - house and ancillary – totaling 2264 square feet; difference of about 29 square feet between what’s allowed and proposed; asking to retain the right to use the 3.6% groundcover.  McCarthy – Asked why the change.  Cohen – The client decided to break up the structure; he felt it was long.  We don’t need relief to go down in ground cover, but we do need it for the 2nd structure.  O’Mara – Under the old zoning, they could have built an additional 441 square feet.  On one page, you ask for 29 feet allowance and on another it’s 9 feet.  McCarthy – That’s probably a typo; good to catch it now.

Motion  Motion to Grant as requested.  (made by: Botticelli)  (seconded)
Vote Carried 5-0

2.  04-20  Peter Braverman and Michael Ashner, Tr,. Winthrop Nantucket Nominee Trust  7-9 Salem St. & 2-4 New Whale St.  Bailey
Applicant seeks relief by Variance pursuant to Zoning By-law Section 139-16.A for a waiver from the side and rear yard setback requirements.  The distance between the eastern wall of the Stop ‘n Shop building and certain Tank Farm structures varies between under 1’ to just over 5’ in a district where the side/rear yard setback requirement is 5’.  The Locus is situated at 7-9 Salem Street (Stop ‘n Shop) and 2-4 New Whale Street (Harbor Fuel Tank Farm), shown respectively on Assessor’s Map 42.3.1 as Parcels 141, 89, 87, and 88, and upon Land Court Plan 13642-D & E and as Lots 6A & 6B on Approval Not Required Plan approved by the Planning Board on January 9, 2020. Evidence of owner’s title is registered on Certificate of Title No.s 12975 and 17520 at the Nantucket County District of the Land Court. The site is zoned Residential Commercial (RC).

Voting  McCarthy, Botticelli, O’Mara, Poor, Mondani
Alternates Thayer
Motion to Grant the relief as requested for Lot 6A with the setback encroachment along the south and easterly lot lines for the existing structure and to be in effect until the structure is removed or demolished. (made by Botticelli) (seconded)

Motion to Grant the relief as requested for Lot 6B for the westerly setback until all the existing tanks are removed and the control center building to come into compliance but not to exceed 3 years during that time; the applicant may ask for an extension with good cause. (made by O'Mara) (seconded)

Carried 5-0

Applicant is seeking relief by Special Permit pursuant to Zoning by-law Section 139-16.C(2) in order to validate an unintentional setback intrusion. The “as-built” survey shows the primary dwelling sited within the required 30’ front yard setback area. A portion of the primary dwelling is as close as 23.6’ from the front yard lot line, with another portion of the porch located farther away from the front yard lot line. Applicant is seeking to validate the siting of the dwelling with the encroaching front porch. In the alternative and to the extent necessary, Applicant seeks relief by Variance pursuant to Section 139-16.A for a waiver from the front yard setback requirements. The Locus is situated at 3 Somerset Road, shown on Assessor’s Map 56 as Parcel 18.1, and as Lot 2 upon Plan Book 25, Page 42. Evidence of owner’s title is recorded in Book 1647, Page 219 on file at the Nantucket County Registry of Deeds. The site is zoned Residential 20 (R-20).
Discussion (1:50)

Williams – Explained the reason for the request. The porch has no impact on the abutter since it faces the road; removing the porch would be an economic hardship for her client. The steps will be moved, or the grade changed to eliminate the need.

Marcklinger – He didn’t realize there was a porch.

McCarthy – Your sewer plan indicates the structures are approximate and it should be remeasured; also, there are no details of the house, just a rectangle. All other plans show the porch, she doesn’t know how he could not have known there was a porch.

Thayer – Asked if he wasn’t given a set of plans.

Marcklinger – He looked at the foundation plan.

McCarthy – This is a big mistake; we are being asked to grant a permit for a 5-foot-deep porch across the front of the house and that is completely within the setback. In all the materials in front of us, the porch is present, and she can’t imagine someone relying on the sewer plan with just a rectangle. Ms. Williams says the sewer plan is what Mr. Marcklinger used to stake the house, and he’s saying that’s not the plan he used. She wants to see the plan he did use. She doesn’t think it would be a hardship to remove the porch; it doesn’t have a foundation.

Marcklinger – Admits he made a mistake by using the foundation plan.

McCarthy – The sewer plan is the evidence provided by the applicant as the plan you used. She wants to see that foundation plan, which isn’t included in the materials.

Williams – The sewer plan and the as-built are what were in the file. It’s been many years that the surveyors have been asking for the Historic District Commission plans; she can’t tell why this was done at the time. Suggested the error might have happened at the Building Department; they did not catch that there is a full porch.

Botticelli – The building permit states there is a porch.

Mondani – This is an egregious error and would prefer the porch come off; he’d like to know what it will take to fix this and remove the porch.

McCarthy – She wants to understand how this happened; asked why Ms. Williams didn’t get the plan Mr. Marcklinger used.

Williams – This is a special permit with only two criteria the ZBA should consider: was it based upon a licensed surveyor – yes; does it impact an abutter – no because the abutter in this case is the road.

Mondani – He’s concerned that permitting this would set a precedent for allowing a front setback intrusion.

Snell – Confirms that Ms. Williams cited the bylaw verbatim.

Thayer – Asked what happened between October 15, 2019, when Mr. Marcklinger did the as-built survey and January 14, 2020, when you received the letter from the Building Commissioner. Mr. Marcklinger said someone else did the survey, but it has his signature; asked who had oversight. He also questions why this application was accepted four days after the deadline. He doesn’t see what the rush would be.

Snyder – She had a special permit approved in August for the driveway; it sat for 3 months waiting on the formal paperwork from the Planning Board to go to the ZBA; after we finally had the permit, we learned that the porch was intruding. It might not seem like a financial burden, but it is; she’s trying to put this into the covenant program due to the financial burden. She can’t refinance until the Certificate of Occupancy (CO) is issued.

Mondani – He would like to know what it would take to correct this by removing the porch.

McCarthy – Val Oliver did the building permit application correctly; she included the porch. She wants to see the site plan submitted with the building permit;

Snell – The Building Commissioner stated that there is a faint line on the plan, which appears to show the porch placed 30 feet from the front property line.

McCarthy – The building permit plan is accurate and shows the porch 30 feet away from the property line; the only plan that doesn’t show 30 feet that we have is the sewer plan. She wants to see the plan Mr. Marcklinger used to stake the foundation; the sewer plan is what the addendum Ms. Williams supplies says.

Williams – Stated this would not set a precedent because the abutter most affected under the bylaw is the street.

O’Mara – It looks like this will be put off; he won’t be here for the March 12 meeting but will be able to do this by phone.

Botticelli – She will be absent as well.

McCarthy – Reviewed items the Board wants to see: stamped building plans, plan Mr. Marcklinger used to set the foundation, and additional information.

Motion

Motion to Continue to March 12th 1:00 p.m. (made by: Mondani) (seconded)

Vote

Carried 5-0
IV. OTHER BUSINESS

1. 051-03 Rugged Scott a/k/a Beach Plum 40B Holland/Posner

**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”.

Voting
- Botticelli (acting chair), O’Mara, Poor, Thayer, Mondani

Recused
- McCarthy

Documentation
- File with associated plans, photos and required documentation

Representing
- Tucker Holland, 4 Seikinnwow Place
- Chris Young, 12 Seikinnwow Place

**Discussion (2:36)** Holland – When he bought his home, he was made aware of the amenity; in pursuing it, no one seemed to know about it. This is a condition required in the Comprehensive Permit; after six months, there is no progress. He was told it is a club and for a $33,000 initiation fee, they would provide access to the pool and clubhouse. We are seeking help in having this requirement enforced in the manner in which it was intended.

Young – He was part of the initial ownership group working with attorneys to handle the 40B application. There were negotiations with direct abutters, which resulted in the agreement between them and the abutters. The developer, Josh Posner always said he was waiting for the homeowners’ association (HOA) to figure out how to activate this. He thinks that is the wrong approach; they were never told this condition existed when they purchased their homes. Feels the developer has pitted neighbors against neighbors.

Thayer – Asked who came up with the 76% for the annual dues and if they feel like it’s a fair price.

Holland – That was determined by the developer and the HOA to be a portion of their annual HOA dues and the portion attributed to the availability of the amenities. None of the neighbors have any issue with the idea of paying fair annual dues; we view that as helping the Rugged Scott residents off-set the costs. The owners pay $5,000 a year. Discussion about what the HOA dues cover in addition to use of the pool and clubhouse.

Holland – We find the initiation fees absurd and the ZBA would never have approved of that.

Thayer – He doesn’t see an initiation fee as being considered at the time.

Botticelli – Read the wording in the Comprehensive Permit pertaining to this issue allowing 10-30 non-residents use of the pool and clubhouse.

Young – The HOA also presented to us that the 10 non-residents had a set time in which to accept the offer and then it was off the table. Also, the offer is only for the current owner; as those sell the properties, the new owners will not have the offer presented to them.

Consensus – Doesn’t read it that way; it states a minimum of 10 non-residents with no time limit.

Mondani – They are clearly putting up road blocks. The developer needs to be involved.

Thayer – Asked which COs are still outstanding.

Snell – Not certain and will look into it.

Thayer – We were clear at the last hearing that those should be held until this is cleared up.

O’Mara – There are still properties under development. Asked if Mr. Posner knew he was expected at this hearing.

Snell – Eleanor Antonietti did not say. Suggested between now and next hearing, we get a ruling from Town Counsel.

Mondani – It might fall to the Zoning Enforcement Officer; there’s a question about who would enforce it. He feels there is a lot of bad faith on their part that’s holding this up.

O’Mara – He feels the HOA doesn’t have much standing due to the wording for the Comprehensive Permit. He doesn’t know what the financial arrangements were. You can join the health club and pool at Nantucket Hotel for around $3500 a year.

Holland – No one is questioning the annual fee. If the non-residents are given restrictions that don’t apply to the residents, then the fee should be appropriately adjusted.

Mondani – The developer is involved in the HOA, and we know if there is an issue that benefits them, they don’t turn it over to the HOA. He feels the developer has to be involved.

Snell – The ZEO only issues the enforcement order; while that is pending, Town Counsel can provide an opinion.

Thayer – In the meantime we can ask that the COs continue to be held for resolution.

Botticelli – It is automatic that the issue be resolved within 30 days.

**Motion**

**Motion to ask the ZEO to issue the violation notices and request Town Counsel opinion and no further COs be issued until this is resolved. (made by: Thayer) (seconded)**

**Vote**

Carried unanimously

2. McCarthy – Pointed out that all the members need to complete their ethics training.

3. McCarthy – We had an application for solar panels within the setback; there was a difference of opinions between ZEO, State law, and our bylaw. ZEO felt they could be in the setback. The Building Commissioner’s take is our setbacks are reasonable and so it is reasonable for solar equipment to not be in the setback. Going forward, she wants the Board to remember the setbacks are in place for a reason and for something to be placed in the setback there should be a compelling reason.

Snell – Our feeling is that our bylaw is not unreasonably restricting solar panels, so the setback can be modified.
V. ADJOURNMENT

Motion to Adjourn at 3:01 p.m. (made by: Botticelli) (seconded) Carried unanimously

Sources used during the meeting not found in the files or on the Town website:
1. None

Submitted by:
Terry L. Norton