



# ZONING BOARD OF APPEALS

2 Fairgrounds Road  
Nantucket, Massachusetts 02554  
[www.nantucket-ma.gov](http://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, February 14, 2019**

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

Called to order at 1:05 p.m. and announcements made.

Staff in attendance: Eleanor Antonietti, Zoning Administrator; T. Norton, Town Minutes Taker  
Attending Members: Toole, McCarthy, Botticelli, O'Mara, Koseatac, Poor, Thayer, Mondani  
Remote Participation: Per 940 CMR 29.10, Ed Toole is participating remotely due to distance.  
Absent: None  
Late Arrivals: None  
Early Departures: Toole, 1:08 p.m.

Agenda adopted by unanimous consent

### I. APPROVAL OF MINUTES

1. January 10, 2019: **Motion to Approve.** (made by: O'Mara) (seconded by: Thayer) Carried unanimously
2. January 16, 2019 40B PH: **Motion to Approve.** (made by: Koseatac) (seconded by: Thayer) Carried 6-0//O'Mara & Poor not voting
3. January 23, 2019 40B PH: **Motion to Approve.** (made by: Koseatac) (seconded by: Thayer) Carried 6-0//O'Mara & Poor not voting

### II. OLD BUSINESS

1. 20-18 Surfside Crossing, LLC Surfside Crossing 40B Freeman  
The primary purpose of the hearing will be the scheduling of the next Continued Public Hearing to a location, date, and time certain.  
Voting McCarthy, Toole, Botticelli, Koseatac, Thayer, Mondani  
Alternates None  
Recused O'Mara, Poor  
Documentation File with associated plans, photos and required documentation  
Representing Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP  
Public None  
Discussion **McCarthy** – The primary purpose is limited to scheduling next public hearing. There will be no substantive discussion.  
**Antonietti** – She has confirmed: March 11 Nantucket High School Cafeteria at 4:30 p.m.  
**Reade** – Request a continuance to that time and place.  
Motion **Motion to Continue to March 11 in that Nantucket High School Cafeteria at 4:30 p.m.** (made by: Botticelli) (seconded by: Thayer)  
Voice Vote Carried: Toole-aye; Thayer-aye; Koseatac-aye; McCarthy-aye; Botticelli-aye; Mondani-aye
2. 23-18 Adam Ross and Emma Ross 50 Okorwaw Avenue Beaudette  
REQUEST TO CONTINUE TO MARCH 14, 2019  
Voting McCarthy, Botticelli, O'Mara, Koseatac  
Alternates Poor, Thayer, Mondani  
Recused None  
Documentation File with associated plans, photos and required documentation  
Representing None  
Public None  
Discussion No discussion  
Motion **Motion to Continue to March 14, 2019.** (made by: O'Mara) (seconded by: Koseatac)  
Vote Carried 5-0

3. 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 McCarthy, O'Mara, Koseatac, Thayer, Mondani  
 Alternates Poor  
 Recused Botticelli  
 Documentation File with associated plans, photos and required documentation  
 Representing John Brescher, Glidden & Glidden  
 Mickey Rowland, applicant  
 Public Victoria Johnson, for Priscilla Johnson of 91 Orange Street  
 Discussion **Brescher** – The Board requested letter from the abutter, Priscilla Johnson, which was received February 13 and sent to Ms. Antonietti  
**Antonietti** – The letter was forwarded via email to Board members.  
**Brescher** – Read Ms. Johnson's letter into the record. Ms. Johnson granted permission to work on the property but asked for proper drainage from the gutter on her side of the structure. Read Mr. Rowland's response to install a gutter and downspout to route water onto his property.  
**Thayer** – Asked how water would be kept on his property.  
**Rowland** – Might have to have a catch basin on the north end, but it won't flow back onto Ms. Johnson's property.  
**Johnson** – Her only concern is the water from the gutter running onto her property. She is satisfied with Mr. Rowland's solution.
- Motion **Motion to Approve as requested with no exterior construction between Memorial Day and Labor Day; the applicant will ensure stormwater will not intrude on the abutter's property.** (made by: Koseatac) (seconded by: O'Mara)  
 Vote 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 MARCH 14, 2019
2. 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 MARCH 14, 2019
3. 04-19 Linda A. Yates 21 Derrymore Road Cohen  
 Applicant is requesting relief by Variance pursuant to Zoning By-law Section 139-32 for a waiver from the 5-foot side yard setback provision in Section 139-16 in order to construct a new dwelling as close as 2 feet from the northerly side yard lot line. The property is located at 21 Derrymore Road, shown on Assessor's Map 41 as Parcel 117 and as Lot 51 upon Land Court Plan 13199-V. Evidence of owner's title is registered on Certificate of Title No. 22854 at the Nantucket County District of the Land Court. The site is zoned Residential -1 (R-1).
- Voting McCarthy, Botticelli, Koseatac, Poor, Mondani  
 Alternates Thayer  
 Recused O'Mara  
 Documentation File with associated plans, photos and required documentation  
 Representing Steven L. Cohen, Cohen & Cohen Law P.C.  
 Linda Yates  
 Public Joe Bedell, 5 Delaney Road  
 Discussion **Cohen** – A yard sale, which would adjust the setback, is held up in Land Court; his client wants to proceed with construction. Once the land is turned over, the house would have a 17-foot offset to the side lot line, also sliding the house over will allow parking on the side and moves the house away from the abutter to the south. The abutter to the north is Ms. Yates' daughter. An abutter expressed concern about this allowing additional development. The elimination of the road precludes the property from being subdivided into two or three lots by removing access to the rear. Asked the Board to think of this as a positive action for the neighborhood.  
**Mondani** – Asked if the additional land would allow any additional rights. Asked what is holding up the yard sale.  
**Cohen** – It is a standard condition in yard sale deed that the land can't be used to create a subdivision. Furthermore, the Town Real Estate Assessment Committee (REAC) reviews all yard sales to assess the value and see if there are any private or public rights, which should be preserved.

**Antonietti** – Currently this locus is over compliant; with addition of the parcel it would come to 11,745 square feet (SF); but can't subdivide without approval from the Select Board. The deed is restrictive. Due to the size and location of the structure, the property couldn't be subdivided.

**Cohen** – When the Land Court approves the technical measurements and calculations, it issues a Certificate of Title to the Town. The Town then distributes the property to the neighbors. The Town has taken the property but doesn't have the Certificate of Title.

**McCarthy** – Asked if the ZBA has granted a variance in the past under similar circumstances.

**Antonietti** – Cited properties which had similar requests and received variances.

**Thayer** – The Historic District Commission (HDC) approval is for plans showing the building within the setback and the parking in the front. Asked when the applicant changed her plan.

**McCarthy** – Asked where the secondary dwelling will go.

**Cohen** – The HDC approved this a month ago; the architect then asked if the house could move 3 feet left. The plan for the cottage is to wait until Land Court finishes its process and the Yates have the land; then the cottage would be moved.

**Poor** – They can't apply for a building permit until the land is absorbed into the property because the house is 3 feet into the setback; they can't have windows on that side and must have a fire wall.

**Cohen** – The answer is an exception to the building code when land to that side isn't commercial or residential. Because the land is currently Town owned and will become residential, it qualifies for that exemption.

**Bedell** – He feels like the language is permitting a 2-foot setback. He's concerned about the increased density. He's also concerned that if this variance is granted, others will be asking for variances.

**Botticelli** – There is a window well shown on the north side; it would put the house over the setback.

**McCarthy** – This yard sale has been in process for five years and the Land Court is slow in its process, but it will be done.

**Poor** – You can't occupy the house with only a 2-foot setback. The window well could be allowed pending a site survey.

**Botticelli** – The window well could only be 1.5 feet deep to stay on the property; suggested they take it out at this time.

**Cohen** – He will address that idea with the architect. When Dartmouth was a public road, the zoning was 5,000 SF; zoning changed so these lots could be cut up into smaller lots. Mr. Bedell's concern is legitimate, but he doesn't think this relief would allow an increase in density because the positioning of the house precludes subdividing the property.

**Mondani** – Asked if the Board has issued similar relief. He doesn't see the validity of the substantial hardship claim.

**Thayer** – Suggested having copies of similar decisions in the file.

Discussion about previous, similar decisions.

**Cohen** – His client has been waiting 5 years for the yard sale to be finalized.

**Antonietti** – A bunch of yard sales went through last year; it's stuck in the Land Court Examiner Department.

**Thayer** – Asked if they would wait for issuance of the Certificate of Occupancy (CO) until the Town transfers the property and not occupy the structure; his concern is what if for some reason the yard sale isn't approved.

**Cohen** – On Nantucket not occupying the house is not a typical condition; but having that condition provides a placeholder to ensure compliance at a later date. We need the CO for financing or to sell.

**Thayer** – Regarding a potential sale, asked if the owner would be willing to put a deed restriction on the property that in the future the property could not be subdivided.

**Cohen** – His client is willing to agree to not subdividing as long as the variance is being acted upon.

**Botticelli** – Asked how the property would sub-divided; they don't have enough land without the yard-sale land.

**Antonietti** – To subdivide, they would have to get permission from the Select Board. The property becomes compliant to be subdivided once the yard-sale land is transferred.

**Botticelli** – She would want to see a copy of any deed restriction that would be placed on the property.

**Cohen** – He'd be willing to do that.

**Antonietti** – There is a full paragraph about not using a yard-sale merger to subdivide. There are a few cases where owners went to the Select Board for permission to subdivide; in one case, it was approved on much larger parcels of land.

**Thayer** – Would want a condition that there would be no parking on Derrymore Road.

**Antonietti** – Read conditions attached to two decisions on cases of similar situations.

**Mondani** – Doesn't see the point of the CO requirement.

**Yates** – If she has to sell, she wouldn't be able to sell without a CO. It hasn't been a hardship to wait 5 years. The hardship is wading through the minutia of building a home on Nantucket. Right now she's looking to purchase land and doesn't know how much that will cost; it would be to move the house so she doesn't have to park on the road or be too close to her neighbor.

**Botticelli** – We wouldn't allow someone to build into the setback. If the parcel were not available, The ZBA would not allow Ms. Yates to move the house.

**McCarthy** – If the risk is a concern, Ms. Yates can wait for the Land Court decision.

**Cohen** – He believes the sale will be resolved in 18 to 20 months; by the time the house is built and Ms. Yates is ready to move in, we'll be close to that finish line.

**Botticelli** – The living room is a single-story mass that could have 2 feet cut off it; if Ms. Yates did that, she wouldn't need relief.

**Cohen** – He appreciates that suggestion. Asked the Board to vote on the variance with conditions, then Ms. Yates can decide which route to take.

**McCarthy** – Asked what would happen if the structure is built with a 2-foot setback then when the sale is confirmed and Ms. Yates says she doesn't want the parcel.

**Cohen** – That could be put in as a condition that if the client waives the right to buy, the variance expires, and the house is now in non-conformance and the Zoning Enforcement Officer brings forth an enforcement action.

**Antonietti** – The wording would be that the client would be in violation.

**Mondani** – He looks at this as would we grant the variance if there were no piece of property available.

**Koseatac** – If we permit this, we could open ourselves up to her coming back and arguing a legitimate hardship in moving the house.

**Botticelli** – Asked that the applicant agree to a continuance to look into reducing the size of the living room.

**McCarthy** – She agrees with Ms. Botticelli's suggestion to reduce the living-room size that allows the house to move and still be in compliance.

Consensus is not comfortable with an approval with conditions being made at this time.

**Motion to continue to March 14.** (made by: Koseatac) (seconded by: Mondani)

Motion  
Vote

Carried 5-0

#### **IV. OTHER BUSINESS**

1. McCarthy – She didn't attend the Planning Board public hearing on zoning articles; the one she's most interested in wasn't on the agenda. Other hearings are scheduled for February 21 and March 11.

#### **V. ADJOURNMENT**

Motion to Adjourn at 2:08 p.m. (made by: Koseatac) (seconded by: Botticelli) Carried unanimously

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

1. None

Submitted by:

Terry L. Norton