



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, March 14, 2019

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

Called to order at 1:08 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

Agenda adopted by unanimous consent

I. APPROVAL OF MINUTES

- 1. February 14, 2019: **Motion to Approve.** (made by: McCarthy) (seconded by: Koseatac) Carried 5-0//Thayer & Toole not voting

II. OLD BUSINESS

- 1. 23-18 Adam Ross and Emma Ross 50 Okorwaw Avenue Beaudette
CONTINUED WITHOUT OPENING TO APRIL 11, 2019
- 2. 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, Koseatac, Thayer, Poor, Mondani
 Alternates None
 Recused O'Mara
 Documentation File with associated plans, photos and required documentation
 Representing Steven Cohen, Cohen & Cohen, P.C.
 Sophie Metz, architect
 Public Jack Folger, caretaker of 19 Derrymore Road representing Shared Haven Nominee Trust
 Discussion
Cohen – Reviewed the request. The yard sale is awaiting approval by Land Court and hopefully will be accomplished within a few months. This application has support of abutters to the north and to the south. Explained how the current architecture fits the neighborhood better and would have to be changed if the structure were kept out of the setback. Part of what they are doing would eliminate the ability to subdivide and it can't be subdivided as a result of the yard sale because of a deed restriction.
Poor – The Historic District Commission (HDC) plan doesn't match the variance request; asked if that has been rectified: the variance-request plan shows the parking in the rear; the HDC plan shows it on the side.
Cohen – Explained why they haven't updated the HDC plan to match the variance plan. He thought that would be a condition of the relief.
Poor – Nothing says parking will be in the rear; it says on the side.
Thayer – It is important to make sure that happens; the gist of a letter of support is that the parking will be in the rear.
Antonietti – There is an update on the Land Court status. Referred to plan shown on page 18 of the packet. A supplementary Petition has been filed for another abutter to the paper road, which means the title exam is complete; that is a good sign for all properties involved.
Folger – The owners asked him to restate their support of this request; the proposed plan is more in keeping with the neighborhood.
McCarthy – Read through similar variances granted. The Madaket relief was granted due to erosion and potential loss of the structure. The Walsh Street decision was about ground cover and we restricted to 29% once they got the yard-sale parcel and couldn't have any more ground cover without ZBA relief. She's reluctant to grant the relief without the land court decision.
Koseatac – He's concerned it would set a precedent.
Mondani – He agrees with Mr. Koseatac; however, we have a pretty good indication that the sale will go through, which sways him to support grant relief. If we put the conditions, which he agrees with, that it has to be approved by the Land Court.

Koseatac – That could create a potential hardship should the Land Court not approve the sale.

Poor – He’s in general agreement with the commission.

Thayer – He appreciates the conditions; they are all things we talked about. He’s not in favor of granting variances in cases like this; however, the conditions seem to be extenuating.

McCarthy – She agrees with Mr. Mondani. If the petition for the property were pending, she would be more inclined to support this.

Mondani – Asked Mr. Cohen to repeat the hardships for his client.

Cohen – They’d be delayed in their ability to sell the lot; they’d be forced to continue parking in the front of the yard; or have the house designed in a way that is less in keeping with neighborhood. We could file the petition; you could make it a requirement for the building permit.

Antonietti – Talked to Town Counsel about this; she said she would take necessary measures to achieve progress on it. She feels confident it will happen.

McCarthy – She would still prefer having the petition in the works; asked for a motion to continue.

Thayer – He’d prefer the petition be filed; he agrees with Ms. McCarthy.

Poor – Asked that in the meantime the language on Item 1 be changed regarding the parking.

Motion **Motion to Continue to the April 11, 2019, at 1 p.m.** (made by: Koseatac) (seconded by: Poor)
 Vote Carried unanimously

III. NEW BUSINESS

1. 01-19 Steven W. Russo, Tr., 43A Union Street Trust 43A Union Street Reade
 Applicant is seeking Special Permit relief pursuant to Zoning Bylaw Sections 139-7(a), 139-18, 139-30, and 139-33.A to allow the alteration, expansion, and change of use of a pre-existing nonconforming residential garage structure. Specifically, Applicant proposes to expand and convert the 190 sq. ft. garage into a 463 sq. ft. single family dwelling. The garage is a pre-existing nonconforming structure as to both side yard setback and use. While the existing side yard setback intrusion will remain, the proposed dwelling will be dimensionally compliant as to all other zoning requirements. Applicant is also requesting a parking waiver of the 1 required space pursuant to Section 139-18. The Locus, an undersized lot created pursuant to M.G.L., c. 41 Section 81L, is situated at 43A Union Street, is shown on Assessor’s Map 42.3.2 as Parcel 29.1, and as Lot B on Plan No. 2017-98. Evidence of owner’s title is recorded in Book 1673, Page 236 on file at the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).

Voting Toole, McCarthy, O’Mara, Koseatac, Thayer
 Alternates Poor, Mondani
 Recused None
 Documentation File with associated plans, photos and required documentation
 Representing Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP
 Public Dave Champoux, Town Tree Warden
 Geoff Smith, Tree Advisory Committee
 Cormac Collier, Nantucket Land Council
 Hershel Allerhand, 47 Union Street
 Liz Coffin, 47 Union Street
 Mary Ellen Peters, 45 Union Street
 Steven Cohen, Cohen & Cohen Law P.C. for Ms. Peters and Dana Zaloom at 3 Mulberry Street

Discussion (1:37) **Reade** – This lot was created under Section 81L containing an existing pre-1955 garage, which is to be converted to a dwelling. First issue is it’s an alteration of a pre-existing, non-conforming structure; the second issue is we need a waiver for parking; the third issue is the existence of a 30-inch diameter Town Elm tree on the property. The plans show a portion of the garage lying within the side-yard setback; the proposed plan will reduce that intrusion; explained how that will occur. All foundation work will be done within the portion that is outside the setback. Lot is not large enough for a full-sized, compliant parking space; the direct abutter obtained approval to remove the deck and construct a new entrance on the front to allow a near-legal-size parking space on their own lot. The tree makes it impossible to do the project with on-site parking; met with the Town arborist to review how they would protect the tree; Jim Cook of Bartlett Tree Service would determine the major roots of the tree.

Koseatac – Asked if they are concerned with flooding and putting in a full basement. That area has issues with flooding.

Reade – He wasn’t aware of the flooding issue.

Toole – Asked if the entire foundation will be hand dug.

Reade – It’s not a big area but the project will be done by hand digging in the area where the roots of the tree are an issue.

Toole – A letter from Carl Jelleme states shoring is necessary to protect the workers from overdig. The shoring would shear every root off; that needs more clarification.

Champoux – The roots cover pretty much the entire property. To him this is absurd; the tree won’t survive.

Toole – Asked what the safe radius would be.

Champoux – Elms have huge root systems; there is no safe radius. The drip line (canopy) covers the entire property. The tree is still going to cantilever over the house.

Thayer – It looks like the second floor will interfere with the branches.

Toole – Asked if the work were done with no basement. would that impact the tree.

Champoux – You are going to completely cover the root system; any construction work will impact the tree. He doesn't want to see the construction happen; he wouldn't permit any pruning of the tree to make room for the house.

Toole – Asked where the bottom branches are.

Reade – Jeff Blackwell measured the distance to the two closest branches. The closest branch would be 2 feet above the gutter line.

Toole – We need to go look at this. He finds it hard to believe that there won't be any part of the tree over the main area of the house.

Champoux – The drip-line radius is probably 100 feet.

Thayer – Asked if ridge poles could be installed showing both the ridge and gutter line.

Toole – The tree is a definite issue.

Smith – He has studied a lot of 41 & 81L subdivisions and many aren't appropriate; this one adversely affects the neighborhood by taking away a parking space. His brother constructed up the street and his waiver for parking was denied. The tree dates back to about 1840; if this is allowed, there should be an escrow should the tree not survive.

Collier – Referred to a letter in the packet from Emily Molden. They are extremely concerned and opposed to the project because of the tree. This is an irreplaceable tree. He has a lot of familiarity with 81L subdivisions; the only part that is grandfathered is the dimensions of the lot. They've created the hardship themselves by going through the 81L process. They should provide on-site parking and not touch the tree. The drip line of pervious surface has not been discussed.

Allerhand – In the summer there is no place to park and the road is so narrow, people have to park on the sidewalk.

Coffin – This is where the bank meets the flood plain; a number of houses in the area have springs bubbling up in the basements. There is one storm drain at the base of Mulberry Street. Elms love that sort of outflow that provides huge burden of water. This tree sumps up a tremendous amount of water; there is no water issue around this tree. That is a beautiful, classic Elm tree. The feeding roots are about six inches below the surface; any traffic across those will pack the earth and starve the tree. The basement will push the water onto the neighbors and we can't accept much more. Roof run off will add to the street flooding. More water in her basement would be a hardship for her.

Toole – Asked for a consensus about the project. It needs more work: no basement, smaller building.

Koseatac – He's not favoring it.

McCarthy – They have to create an off-street parking spot. The tree and parking and flooding should have all been considered.

Mary Ellen Peters – Her property is less than 1 foot from this building and her house is very fragile. She's so afraid the foundation work will impact her; she's concerned about the loss of parking depending on how many people live there.

Toole – The board doesn't support the application as submitted.

Cohen – One thing not taken into account is that this lot could be rendered unbuildable due to the root system and canopy of the tree. To deny it the ZBA would have to make findings that the parking and the expansion are a detriment to the neighborhood. This house fills the entire lot as the eye perceives it; it will have a 5-foot perimeter around the house. It is generally a requirement that substantial rebuilds are a chance to eliminate the setback encroachment; they are asking to maintain the setback encroachment. Parking should not be waived; the house next door doesn't have parking because that is waived, and this is now asking for no parking. Also, you are adding an impervious parking surface over the roots of the tree. If it's allowed to be 2 stories, it should have no windows looking into neighbors' yards or should have adequate screening. Also, there should be no construction during the summer months. Feels this application is so ill-conceived no variance should be granted.

Mondani – We are being asked to rely on the survey, which says it shouldn't be relied on because it's a mortgage plot plan. Asked if the ZBA usually accepts mortgage plot plans.

Toole – It depends on the case; that is another issue with this application. Yet another issue he has is the fire code.

Poor – There are no windows facing the abutters; they will have to fire-proof any area within three feet of the property line. The door and window are problematic.

Reade – He wants to discuss all this with his client in hopes of a plan more acceptable to the board. Asked for a continuance to the April meeting.

McCarthy – She'd like to see photos of the tree and actual distances from the trunk to the side of the proposed house.

Toole – We don't need to do a formal site visit; everyone can drive by.

Motion to Continue to April 11, 2019, at 1 p.m. (made by: Thayer) (seconded by: McCarthy)
Carried 5-0

Motion
Vote

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 APRIL 11, 2019

Voting McCarthy, O'Mara, Koseatac
 Alternates Poor, Thayer, Mondani
 Recused Toole
 Documentation File with associated plans, photos and required documentation
 Representing None
 Public None
 Discussion (2:30) **McCarthy** – They asked for a continuance without opening.
 Motion **Motion to Continue to April 11, 2019, at 1 p.m.** (made by: O'Mara) (seconded by: Koseatac)
 Vote Carried unanimously

3. 05-19 Why Worry II, LLC 8 Towaddy Lane Kelsey
 Applicant is requesting relief by Special Permit pursuant to Nantucket Zoning By-law Section 139-33.A, to allow a change of use from accessory to residential of a pre-existing nonconforming attached a shed and to alter a pre-existing nonconforming shed and dwelling structure by enclosing a deck (stoop) to be converted into a bedroom. The resulting footprint of the pre-existing nonconforming structure will remain unchanged. The existing ground cover will be expanded by approximately 28 square feet as a result of the enclosure, yielding a total proposed ground cover of 1,499 sq. ft. where maximum allowable ground cover pursuant to Section 139-33.E(1)(b) is 1,500 sq. ft. Locus, an undersized lot of record, is located at 8 Towaddy Lane, shown on Assessor's Map 49.3.2 as Parcel 15.5 and as Lot 6 on Plan File 9-E. Evidence of owner's title is recorded in Book 1443, Page 28 on file at the Nantucket County Registry of Deeds. The site is zoned Sconset Residential Twenty (SR-20).

Voting Toole, McCarthy, O'Mara, Koseatac, Thayer
 Alternates Poor, Mondani
 Recused None
 Documentation File with associated plans, photos and required documentation
 Representing Lewis Kelsey
 Public None
 Discussion (2:31) **Kelsey** – Asking to change the use of a shed attached to the back of the house to a first-floor room; this would add 48 square feet to groundcover.
Toole – Asked why Marcus Silverstein tagged the storage. Using the math provided, they are very close to the 1500 square feet; that's more than 48 square feet.
Kelsey – The survey dates back to when they bought the house.
Thayer – Suggested someone confirm the as-built survey.
Toole – The suggestion has been made to get a current and accurate as-built survey; because if you come back later for relief because you used an inaccurate survey, we'll ask you to remove the incursion.
 Consensus has no issues with enclosing the shed.
 Motion **Motion to Grant as requested with conditions.** (made by: Koseatac) (seconded by: Thayer)
 Vote Carried 5-0

IV. OTHER BUSINESS

1. ANNUAL TOWN MEETING – General Timeline & Information
 - a. Warrant as adopted available on Town website – Friday, March 8, 2019:
Antonietti – The planning Board report should explain what the articles will do; though she can write up a report on it.
 - b. Printed Warrant mailed out to registered voters – Thursday, March 21, 2019
 - c. ATM – Monday, April 1, 2019 at 6 p.m.
2. ANNUAL TOWN ELECTION – Tuesday, April 9, 2019
3. Not anticipated 24-hours in advance.
Toole – Ivana Quirk is now working for Peter Freeman. We need to discuss the implications of this.
O'Mara – He thinks this should be discussed under Executive Session; asked why the Executive Session was cancelled.
McCarthy – Current Town Counsel would be available at the 26 March 2019 meeting.
Toole – The Executive Session was cancelled on advice from Town Counsel. The idea is to discuss this in a public forum after it has been properly posted. We will put it on the March 26 agenda as the first item.

V. EXECUTIVE SESSION

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.

Toole – The Executive Session is cancelled at advice of counsel.

Motion **Motion to Cancel the Executive Session.** (made by: McCarthy) (seconded by: O'Mara)

Vote Carried unanimously

VI. ADJOURNMENT

Motion to Adjourn at 2:52 p.m. (made by: Thayer) Carried unanimously

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

1. None

Submitted by:

Terry L. Norton