



ZONING BOARD OF APPEALS

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

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

~~ MINUTES ~~

Thursday, June 11, 2020–1:00 p.m.

This meeting was held via remote participation using ZOOM and YouTube,

Pursuant to Governor Baker's March 12, 2020 Order Regarding Open Meeting Law

Called to order at 1:00 p.m. and announcements by Ms. McCarthy.

Staff in attendance: Eleanor Antonietti, Zoning Administrator
Attending Members: McCarthy, Botticelli, Toole, O'Mara, Koseatac, Poor, Thayer, Mondani
Early Departures: McCarthy, 2:16 p.m.; O'Mara, 2:18 p.m.
Town Counsel: George Pucci, K&P Law

Motion to Adopt the Agenda as amended. (made by: Toole) (seconded)

Roll-call Vote Carried 5-0//Botticelli, Toole, O'Mara, Koseatac, and Thayer-aye

I. APPROVAL OF MINUTES

1. March 12, 2020
2. May 14, 2020: Toole – Page 5 of 6, “garage built on affordable lots built without...mod” add of Comprehensive Permit
Motion **Motion to Approve Mar 12 & May 14 as amended.** (made by: Toole) (seconded)
Roll-call Vote Carried 5-0// Botticelli, Toole, O'Mara, Koseatac, and Thayer-aye

II. OLD BUSINESS

1. 09-20 Timothy E. Quinlisk & Elizabeth A. Quinlisk 88 Quidnet Road Alger
REQUEST TO CONTINUE to July 9, 2020
Motion **Motion to continue. (made by: O'Mara) (seconded)**
Roll-call Vote Carried 5-0//O'Mara, Koseatac, Poor, Thayer and McCarthy-aye
2. 11-20 Peter J. Mackay & Alison Mackay and David P. Mackay & Anne M. Phaneuf, Tr., Mackay/Phaneuf Family Trust 21 & 25 Monohansett Road Alger
REQUEST TO CONTINUE to July 9, 2020
Motion **Motion to continue. (made by: O'Mara) (seconded)**
Roll-call Vote Carried 5-0//McCarthy, Botticelli, Toole, O'Mara, and Koseatac-aye
3. 12-20 Anne Maletta 15 Broadway Fader

Applicant is requesting relief by Special Permit pursuant to Zoning By-law Sections 139-30 and 139-33.A(1)(a) to allow alteration of the pre-existing nonconforming structure by adding an air conditioning (“HVAC”) unit along the southerly side elevation of the structure. The proposed siting will be no closer to the lot line than the existing dwelling which is pre-existing nonconforming as to setbacks. In the alternative and to the extent necessary, applicant requests relief by Variance pursuant to Section 139-32 for a waiver from the side yard setback requirements in Section 139-16. Locus is situated at 15 Broadway, shown on Assessor’s Map 73.1.3 as Parcel 113 and upon Plan No. 2015-78. Evidence of owner’s title is recorded in Book 1506, Page 89 on file at the Nantucket County Registry of Deeds. The site is zoned Sconset Residential One (SR-1).

Voting McCarthy, Botticelli, Toole, O'Mara, Koseatac
Alternates Poor, Thayer, Mondani
Recused None
Documentation File with associated plans, photos and required documentation
Representing Marsha Fader
Patrick McCarthy, General Contractor
Ed Ward, HVAC Contractor

Public None
Discussion **Fader** – Reviewed supplemental information; we don’t have the wall space to mount the equipment. The proposed Bosch Bova equipment exhausts out of the top rather than discharging out the side.
Ward – With vertical discharge, it is more efficient, quiet, and can function in a narrow space.
P. McCarthy – The unit covers the lower 2-feet of the window. There are two walls between the unit and the neighbor to mitigate the sound.
Botticelli – She appreciates the effort of looking at other options. She agrees the first option is the best. Having the units on the front is detrimental to the historic nature of the house.
Toole – As long as the adjacent neighbor is not in opposition, he has no concerns. We could stipulate it is no closer than 8.535 feet from the property line.

O'Mara – Asked the proposed distance from the condenser to the property line – 10 inches.

Koseatac – No comments or questions.

S. McCarthy – We got a letter from 11 Front Street; they asked for assurance it is quiet and what recourse they have if it is not quiet. She thinks the only recourse would be to talk to the neighbor.

Fader – We responded to the letter with more information and distances; it is actually about 25 feet away from their house with a shower, fence, and public way between the units and their property.

Discussion – About the shower and shed in the setback.

Antonietti – The shower is not a concern to the Board because it does not have a fixed platform. It is simply a fence.

P. McCarthy – Asked if the shed in the setback should be moved.

Botticelli – As long as it doesn't have a floor, it's okay.

Motion

Motion to Grant the relief as requested and no closer than 8.535 feet from the lot line and no further expansion without ZBA approval. (made by: Botticelli) (seconded)

Roll-call Vote

Carried 5-0//McCarthy, Botticelli, Toole, O'Mara, and Koseatac-aye

III. NEW BUSINESS

1. 08-20 Nantucket Westmoor Farms, LLC (Appellant) 6 & 8 Old Westmoor Farm Road Swain

REQUEST TO CONTINUE WITHOUT OPENING UNTIL AUGUST 13, 2020

Appellant brings an appeal, pursuant to M.G.L. c.40A, Sections 8 & 15 and Zoning By-law Sections 139-29.E and 139-31, of a decision by the Building Commissioner to issue a Cease and Desist Order alleging zoning violations. Appellant requests that the Zoning Board of Appeals reverse the Order and render a decision that the Appellant's use of the property is in compliance with the Zoning By-law and consistent with the Planning Board's July 2016 decision that special event uses on the property are not commercial in nature. Locus is situated at 6 & 8 Old Westmoor Farm Road, shown on Assessor's Map 41 as Parcels 821 & 822, as Lot 22 upon Land Court Plan 13328-M and Lot 35 upon LCP 13328-N. Evidence of owner's title is registered on Certificate of Title No. 21835 at the Nantucket County District of the Land Court. The site is zoned Residential Twenty (R-20).

Voting McCarthy, Botticelli, Toole, O'Mara, Koseatac

Alternates Poor, Thayer, Mondani

Discussion Not opened at this time.

Motion **Motion to Continue. (made by: Botticelli) (seconded)**

Roll-call Vote Carried 5-0//Botticelli, Toole, O'Mara, Koseatac, and Thayer-aye

2. 10-20 Sarah F. Alger, Tr., 7/11 Nominee Trust 7 & 11 Squam Road Alger

Applicants are seeking Special Permit relief pursuant to Zoning By-law Sections 139-30 and 139-33.A(1) to alter, extend, and change a pre-existing nonconforming use. The property is preexisting nonconforming as to use in that it contains a total of three dwelling units, and as to setbacks. Specifically, the Applicant proposes to demolish and reconstruct one of the dwellings in a different but conforming location. The Locus is situated at 7 & 11 Squam Road, is shown on Nantucket Tax Assessor's Map 21 as Parcel 8, and as Parcel E on Land Court Plan 11019-E and Lot F1 on LCP 11019-F. Evidence of owner's title is registered on Certificate of Title No. 24822 at the Nantucket County District of the Land Court. The site is zoned Limited Use General One & Three (LUG-1 & LUG-3) zoning districts.

Voting McCarthy, Toole, O'Mara, Koseatac

Alternates Poor, Thayer, Mondani (Botticelli sat off)

Recused None

Documentation File with associated plans, photos and required documentation

Representing Sarah Alger, Sarah F. Alger P.C.

Rhett Dupont, Contractor

Public None

Discussion **Alger** – Seeking a modification to alter a previous approval to demolish an existing secondary dwelling and build a new structure; the lot is non-conforming regarding the existence of three dwelling units.

Toole – The 2015 plans shows a timber retaining wall; asked what's happening with it.

Alger – That it on the neighbor's property; we are not proposing any changes to it with this application. One dwelling unit is not being used.

McCarthy – The 1997 decision combined all the dwellings.

Dupont – Dwelling #2 is a 3-bedroom cottage and was moved off the lot line. Existing Structure labeled 870 square feet (SF) is an old garage housing the generator. Dwelling #1 is the main house renovated is 2014-2015. Existing Structure labeled 1559 SF is a garage. There 3rd dwelling is the one we propose to alter. The retaining wall holds up the earth between the two properties and they can't see it.

O'Mara – It appears the property will become less non-conforming.

Antonietti – There is no change to setback.

McCarthy – There was no correspondence on this.

Motion **Motion to Grant relief as requested. (made by: Toole) (seconded)**

Roll-call Vote Carried 5-0//McCarthy, Toole, O'Mara, Koseatac, and Thayer-aye

3. 13-20 Rebecca M. Gilbreth 92 Hulbert Avenue Malloy
 Applicant is requesting relief by Special Permit pursuant to Zoning By-law Sections 139-30, 139-33.A(1), and 139-17.C(7) to renovate a light tower and place it on a reconstructed foundation in conformance with applicable building codes and FEMA regulations. The structure is pre-existing nonconforming as to height and front and side yard setbacks. The proposed height is roughly 35 feet, for an approximately 2-foot vertical expansion within the front and side yard setbacks without coming any closer to the lot lines. The Locus is situated at 92 Hulbert Avenue, is shown on Tax Assessor's Map 30 as Parcel 51, and upon Plan Book 8, Page 52. Evidence of owner's title is recorded in Book 448, Page 322 on file at the Nantucket Registry of Deeds. The site is zoned Residential One (R-1).

Voting McCarthy, Botticelli, Toole, O'Mara, Koseatac
 Alternates Poor, Thayer, Mondani
 Recused None
 Documentation File with associated plans, photos and required documentation
 Representing Dan Malloy, Site Design Engineering
 Public None
 Discussion **Malloy** – The larger historic light tower is being renovated to meet code; part of that is to raise it 2 feet for flood Zone compliance.
Botticelli – Asked why the 1st-floor elevation was 9.5; she thought it the flood elevation here is at 7 and the 1st floor would be one foot above that.
Malloy – The flood elevation is 8. Shared the FEMA flood-zone map.
Antonietti – There was no correspondence from any abutters.
Botticelli – Wants this raised as little as possible; it could come down 6 inches; it's reasonable to give them a couple of inches.
Toole – On the architect's plans, the north elevation entry way doesn't appear to be as high; it shows top of foundation at 8.5 and the shed entry area is below that. It needs to be accurately depicted on the plans.
Malloy – He doesn't have data about that distance; asked that when the building is raised to have 3" of flexibility.
Botticelli – Confirmed there is no change of use.
Toole – The deck is marginally in the setback and existing.
Botticelli – Asked about the smaller lighthouse.
Malloy – That is being raised as well but it still conforms to zoning. Reviewed elevation information regarding the steps for both structures.
Toole – Asked about the deck on the rear, when it was built and is it being raised as well. It looks like the top of the tower is going up three feet. Suggested continuing for a correction or renoticing for that extra foot.
McCarthy – Wants to see a plan regarding changes to the entry way and height of the tower.
Antonietti – We are talking about the average grade change, not the roof height; that is how it was noticed.
McCarthy – She doesn't think this has to be renoticed. She would like to continue this for additional information on the elevation and evidence of a permit or age for the deck. It would also be helpful to have Ethan McMorrow available for questions.

Motion **Motion to Continue until July 9th for more information. (made by: Botticelli) (seconded)**

Roll-call Vote Carried 5-0//McCarthy, Botticelli, Toole, O'Mara, and Koseatac-aye

4. 14-20 Westmoor Club LLC 10 Westmoor Lane Cohen

REQUEST TO WITHDRAW WITHOUT PREJUDICE

Voting McCarthy, Botticelli, Toole, O'Mara, Koseatac
 Alternates Poor, Thayer, Mondani
 Motion **Motion to Approve the withdrawal without prejudice. (made by: Toole) (seconded)**
 Roll-call Vote Carried 5-0//Botticelli, Toole, O'Mara, Koseatac, and Mondani-aye

IV. OTHER BUSINESS

1. 051-03 Rugged Scott a/k/a Beach Plum 40B Holland/Posner
 Voting Botticelli (acting chair), Toole, Koseatac, Thayer, Mondani
 Alternates Poor
 Recused McCarthy, O'Mara
 Documentation Beach Plum Village Comprehensive Permit, Settlement Agreement
 Developer Reps Josh Posner, Rugged Scott a/k/a Beach Plum 40B
 Paul Haverty, attorney Rugged Scott a/k/a Beach Plum 40B
 Marianne Hanley, Reade, Gullicksen, Hanley, & Gifford LLP, attorney Rugged Scott a/k/a Beach Plum 40B
 Other speakers James Timmins, attorney for Beach Plum Village Homeowners Association (HOA)
 Tucker Holland, 5 Seikinnow Place
 Chris Young, 12 Seikinnow Place
 Discussion (2:20) **Holland** – Over the last 10-11 months, we have had numerous conversations with Rugged Scott residents and neighbors. Following the May meeting, we reached out to the developer and met to arrive at terms; we agreed with a feeling this meets with the spirit of the Comprehensive Permit.

Haverty – Howard Edelman has worked to bridge the gap and bring both sides to an agreement. Some non-resident neighbors have not agreed with the terms and have chosen to continue the fight. This condition to the Comprehensive Permit would not pass muster today.

Timmins – The Rugged Scott Homeowners Association Trust (RSHAT) purports to represent the homeowners; but it is a Trust into which members have no input. Mr. Posner and two attorneys are the members of the Trust; it is a vehicle of the developer. All Trust documents are signed solely by Mr. Posner. This is an entity that we believe was not the intent behind Section 3.2 of the original permit. He doesn't know if the RSHAT document was seen by the ZBA; he doesn't feel the bylaws would have been approved. Mr. Posner has sole control and has un it since 2006. The Homeowners Association (HOA) has not had any control and they are very upset about this agreement since it is very onerous on the Rugged Scott residents. There are a number of issues that should be addressed; however, Mr. Edelman and others are frustrated with this and questions about authority. It's in Book 1010 Page 1: Mr. Posner is the sole signatory. The Rugged Scott residents are not being obstructive. There is a lack of clarity about rights. Asked for more time on this; he wants time to meet with the HOA and explain their rights to them.

Young – He would be willing to continue the conversation as requested by Mr. Timmins. He feels some core issues were not satisfactorily addressed.

Haverty – He doesn't agree about continuing this since he has not heard that the terms of the Comprehensive Permit have not been met. His client did exactly what he was supposed to in order to bring this to a conclusion. Feels there is no legitimate reason to further hold up the project.

Young – The agreement was drafted to have an end date; the original agreement did not have an expiration date.

Toole – He thinks more work needs to be done regarding the question of the Certificates of Occupancy (COs). He doesn't feel that the case is resolved sufficiently to issue those; there is still the outstanding issue with the garages. He'd like Town Counsel's opinion.

Pucci – The condition should have been decided before issuance of the building permit. The condition provides that the legal document in final draft form for the HOA be submitted for ZBA approval. It is up to the Board to decide if they are comfortable with the document as submitted.

Toole – Some COs should never have been issued; somewhere else in the process, the COs for the final lot were tied to this issue as well. The first issue is the garages, which still needs to be resolved; now we have this issue. In his opinion, neither issue has been resolved and the COs shouldn't be issued.

Pucci – Part of the problem is that the COs were issued. Now the applicant agrees, the final COs are tied to the non-resident issue. Section 3.2(o) talks about requirements for the non-resident amenities access; it provides that the agreement shall be submitted for ZBA approval. You are within your right to discuss this further; hopefully the issues raised in opposition can be quickly resolved.

Thayer – The end date is in paragraph. 1 of the agreement; asked if after 2022, no more memberships will be offered as people drop out.

Holland – It was important to the homeowners that this be a program of limited duration. The feeling was that this was part of the Comprehensive Permit because it impacted the neighborhood, and this was a mitigation for that impact. In the future, people shouldn't be buying property on Seikinnow because of this program. It provides 3 years for neighbors to join.

Thayer – This should have been offered as soon as the amenities were constructed.

Young – He disagrees with Mr. Holland's opinion; for 14 years, we've been denied use of the amenities and many folks have moved on without ever getting any of that enjoyment. Now to open this for only 3 years should be redacted.

Posner – We said we would do the offer as the project came close to completion; in that way, we could involve the current owners in describing the program. This project has been under development for a very long time.

Thayer – Asked if it is in writing that the program would be offered once the project was close to completion.

Posner – He'd have to look for it. In May, the 16-point agreement was approved with all but 2 points; at that time the program was open ended. It was important to the residents that it be a limited offer. Many homeowners have written to him saying they like the agreement. He believes the RSHAT bylaws were submitted to the ZBA and approved. The idea is the developer is legally responsible for carrying out the HOA duties until the last home is sold. There has been a lot of talk about when the last unit is sold, and democratically electing the 3 Trustees to take over the Trust.

Mondani – Asked what the Board's oversight is on this matter.

Pucci – Cited the sections that grants the ZBA oversight of this agreement. They have the obligation to get ZBA approval on this. That people object to it is not relevant to your jurisdiction.

Mondani – He feels this agreement meets the spirit of the Comprehensive Permit; but he does have an issue with the 3-year limit. It should be on-going. About the HOA and whether or not it was formed correctly, he agrees the developer maintains control until the last lot is sold. The HOA can change the bylaws once the developer steps down. He'd lean toward approving this with the removal of the 3-year term limit.

Haverty – Responded to Mr. Pucci's comments by reading Section 3.2(o) regarding the ZBA's right to review the use agreement; it goes on to reference a map under Exhibit C regarding who would have access with a minimum of 10 family memberships and no more than 30. That does not require ZBA oversight. The drafting could have been more precise.

Botticelli – Referred to the settlement agreement Item 9 stating that Rugged Scott agrees to comply with Comprehensive Permit Section 3.2(o) and will present and discuss with a group of abutters on this matter before submittal for ZBA approval. It doesn't specify that is for the hours of operation only.

Pucci – The only question is the scope of ZBA approval, not that it is your jurisdiction.

Timmins – The issue is permit compliance; in the original Comprehensive Permit, the homeowners have been left out of the process. The RSHAT bylaws are at the Registry of Deeds but the homeowners have never seen it. If you read the actual trust, there is transitional language; we are talking about 40 out of 42 units with property interests when all that is left is the sale of two homes. This was the product of an agreement between parties and the language stands. Section 3.2 was intended to give the homeowners more of a role.

Hanley – She guarantees all these documents were shown to the ZBA and the documents were enumerated in the closing agreements and deeds. These memberships have been offered.

At the last hearing about the garages, the COs are not tied to the garage issues; she's talked to Mr. Pucci about that. The last COs are held up until the last purchase offers are made. At that hearing, the vote was to withhold COs for the two specified lots.

Toole – The intent was to hold the COs until the issue was resolved, not the closing of the hearing. The garage issue has not been resolved; it was wrong for Ms. Hanley's client to get the three COs before the garage issue was resolved.

Pucci – The COs were issued. The garage issue is under active litigation before the Housing Appeals Court. Regarding both garages, it isn't worthwhile to continue arguing about the garage lots at this time. You are here about the remaining COs and the neighbor membership. Unless there's something specific that the Board is pointing to regarding an agreement or action he's not privy to, he wouldn't tie the final two COs to the garages.

Thayer – He agrees with Mr. Toole on that point. He doesn't feel the COs on those lots should have been issued and we should continue to hold any COs until the garage issue is resolved. He's not willing to accept this agreement with the time-limit attached.

Timmins – The garage issue was resolved against the developer, who is appealing that decision. There have been things that have happened that have gone awry.

Toole – He's not willing to support this agreement with the time limit.

Koseatac – Agrees with Mr. Toole and Mr. Thayer. He recalls the COs would be held so the ZBA would have teeth; now the representative and developer are saying otherwise. He doesn't like the time limit on the agreement.

Toole – He wants them to go back to negotiations and come back with something mutually agreed upon.

Mondani – He's okay with the agreement as written; it appears the HOA voted on it.

Thayer – The way it stands now, Mr. Posner makes the decisions; if he were to remove the time-limit condition, he would support the agreement.

Botticelli – Agrees with Mr. Thayer.

Posner – He's trying to find something people can live with. He was told Mr. Timmins clients want fewer years, not more and higher prices, not less. If you were to support the Memorandum of Agreement with the proviso that the term not end in 3 years, that might get us to a resolution.

Timmins – There is a divergence of thoughts on this within the community; not all of them felt they had a say in this.

Motion

Motion to Continue to July 9 meeting. (made by: Toole) (seconded)

Roll-call Vote

Carried 6-0//Toole, Koseatac, Mondani, Thayer, Botticelli, and Poor-aye

V. ADJOURNMENT

Motion to Adjourn at 3:34 p.m. (made by: Toole) (seconded)

Roll-call Vote

Carried unanimously//Toole, Mondani, Koseatac, Thayer, Poor, and Botticelli-aye

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

1. None

Submitted by:

Terry L. Norton