



Planning and Land Use Services

Building ▪ Health ▪ Historic District Commission ▪ Planning Board ▪ Zoning Board of Appeals

STAFF REPORT

Date: February 9, 2016

To: Zoning Board of Appeals

From: Eleanor W. Antonietti
Zoning Administrator

Re: February 11, 2016

PLANNED ABSENCES: *Michael O'Mara; Mark Poor; Geoff Thayer*

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I. APPROVAL OF THE MINUTES:

- January 14, 2016

II. OLD BUSINESS:

- 04-16 Donald J. Mackinnon, Trustee of Nantucket 106 Surfside Realty Trust – *a/k/a* SURFSIDE COMMONS 40B 106 Surfside Road Mackinnon
Extended Close of Public Hearing deadline September 30, 2016 (180 days from Initial Public Hearing with Extension)
Decision Action deadline November 10, 2016 (40 days from close of Public Hearing)
CONTINUED TO APRIL 14, 2016 *Sitting Members:* ET LB **MJO** SM KK

After the Initial Public Hearing on January 14th, Staff submitted a request for a “ball park” estimate in terms of length and approximate cost of the sewer connect at Surfside Commons to the Town’s Engineering Consultant, Ed Pesce. Mr. Pesce worked up an estimate for the cost. He measured a length of approximately 1,995 linear feet of sewer force main (using a scale) and ultimately used 2,000 LF for a cost estimate. The installation of the sewer piping from the proposed pump station shown on the plans to the sewer manhole connection they show on Fairgrounds Road (Sheet 3 of the plans) would cost approximately \$264,412. Other sewer-related costs – such as the design of the pump station and force main – would amount to an approximately \$30,000 expenditure.

Applicant has requested a Continuance for 2 months. The Site Visit – which was previously scheduled for February 2nd – will need to be rescheduled, as will the Comment Deadline (2/22/2016) for other local Boards and Departments.

Ultimately, there will need to be **TWO MOTIONS** and votes by the Board at the February 11th public hearing session.

The **FIRST MOTION** would be for the Board to accept an extension of time from the Applicant of the 180 day deadline to complete the public hearing. That motion would require a **MAJORITY VOTE**. The extension should be in writing, should recite that the Applicant agrees to extend the 180 day deadline to complete the public hearing to an appropriate date that would give the necessary extra time caused by the request to postpone having a substantive hearing session until April 2016. This extension of the public hearing completion deadline has been received from the Applicant and is in hand. The extension document and the vote of acceptance will be filed by Staff with the Town Clerk's Office, upon vote by the sitting board.

The **SECOND MOTION** would be for the ZBA to vote to continue the public hearing to a date in April – which could be the regularly scheduled meeting date on April 14th, per the specific request of the applicant in the email, included on Page 11 of your packet. This too would require a **MAJORITY VOTE**.

The re-scheduling of the site visit is up to the chair. The setting of the comment period is administrative scheduling also, so the chair can reset the schedule.

III. NEW BUSINESS:

- 05-16 William J. Stone, II 8 Atlantic Avenue Jensen
CONTINUED TO MARCH 10, 2016 CONFLICTS: SM
 Applicant is requesting Special Permit relief pursuant Zoning Bylaw Section 139-16.C(2) to validate unintentional front and rear yard setback intrusions, both of which relate to the siting of stoops and stairs required by Building Code. In the alternative and to the extent necessary, the applicant seeks modification of prior Variance relief to validate the site of the dwelling. The Locus, an undersized lot of record created pursuant to M.G.L. Chapter 41 Section 81L, is situated at 8 Atlantic Avenue, is shown on Assessor's Map 55 Parcel 18, and as Lot 62 on Plan No. 2011-5. Evidence of owner's title is recorded at Book 1234, Page 237 on file at the Nantucket County Registry of Deeds. The site is zoned Residential 1 (R-1).

- 06-16 1620 Capital, LLC 25 Broadway Brescher
 Action deadline May 11, 2016 CONFLICTS: NONE KNOWN
 Applicant is requesting Special Permit relief pursuant to Zoning By-law Section 139-33.A(1) to allow the alteration of a pre-existing nonconforming structure by lifting the structure to install a new foundation, adding new second floor dormers, and extending the existing one-story entry to two stories. While the height will increase from 20 feet to 21 feet, the footprint will not change. The property and pre-existing nonconforming duplex thereon are nonconforming with respect to lot area, setbacks, ground cover ratio, and use. The proposed alterations will not increase the pre-existing nonconformities. The Locus, an undersized lot of record, is situated at 25 Broadway, and is shown on Assessor's Map 73.1.3 as Parcel 108. Evidence of owner's title is recorded at Book 1489, Page 190 on file at the Nantucket County Registry of Deeds. The site is zoned Sconset Old Historic (SOH).

Applicant is requesting Special Permit relief to alter a preexisting nonconforming structure on a preexisting nonconforming lot in the SOH zoning district. The locus, an undersized lot of record, contains 1,803± square feet where a minimum of 5,000 square feet is required. The pre-existing nonconforming duplex ^(not allowed in the SOH), known historically as "The Hope Chest", has a foot print of 1,085± square feet for a GCR of 60.2± % where maximum allowable GCR is 50%. The structure is sited 0.5 feet from the northerly side yard lot line, 0.9 feet from the easterly rear yard lot line, and 0.6 from the southerly side yard lot line where minimum rear and side yard setbacks are 5 feet.

The proposed alterations, which have HDC approval, involve:

1. Lifting the structure to install a new foundation, leaving the footprint unchanged. However, the height of the structure will increase from 20 to 21 feet at its highest point;
2. Adding two 2nd floor dormers to the West elevation,

- 3. Adding a dormer to the 2nd floor and extending the existing one-story entry to two stories along the East elevation.

Bob Gardner, GM at Wannacomet Water Co., has expressed concerns about the impact of the proposed work on the existing water main, which is less than 2 feet off of the North end of the dwelling. He has asked that the ZBA require the applicant to meet with Wannacomet prior to any work being done at the site to ensure that the main does not undergo any damage. The sewer main, which required major repairs in 2014, will need similar protections.

In addition, 4 abutters sent in comments – all included in your packet. The consensus among them relates to the disruption of quality of enjoyment and infrastructure. They all ask that the work should not be allowed during the summer due to its location which entails quadruple frontage on Front Street to the North and East, Broadway to the West, and “Tucker Street” to the south. Due to lack of off-street parking in the vicinity, Broadway is frequently used for off-site parking by local residents. In addition, the street would not readily accommodate work trucks.

While the proposed alterations will not increase the nonconforming nature of the lot, use, or structure – there is still the threshold of whether it could be considered substantially more detrimental to the neighborhood than the existing nonconforming structure/lot. The above concerns regarding negative impact on the immediate neighborhood and the ‘fragile’ infrastructure will inform your decision and conditions imposed therein, as will the following sections of the BY-LAW:

Pursuant to Section 139-30.A:

- (1) The special permit granting authority may issue special permits for structures and uses which are in harmony with the general purpose and intent of this chapter subject to the provisions of such chapter.
- (2) Such permits may impose conditions, safeguards and limitations intended to ensure that the use or structure is in harmony with the general purpose and intent of this chapter.

Pursuant to Section 139-33.A:

- (1) Preexisting, nonconforming structures or uses may be extended, altered, or changed, provided that:
 - (a) The special permit granting authority finds that such extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure and/or use to the neighborhood. Where an existing structure violates a front, rear, or side yard setback distance, the special permit granting authority may issue a special permit to allow an extension, alteration, or change to the structure, provided that the nonconforming setback distance is not made more nonconforming and based upon a finding that the extension will not be substantially more detrimental to the neighborhood than the existing nonconformity; or

- 07-16 William H. Ranney and Lori A. Ranney 3 Swayze Drive Brescher
 - Action deadline May 11, 2016 CONFLICTS: NONE KNOWN
 - Applicant is requesting Special Permit relief pursuant to Nantucket Zoning Bylaw Section 139-16.C.(1) to reduce the side yard setback from ten (10) feet to five (5) feet. In the alternative, the Applicant is requesting Variance relief pursuant to Section 139-32 from the intensity regulations in Section 139-16 to validate the air conditioning unit sited approximately 6.4 feet from the side yard lot line. The Locus is situated at 3 Swayze Drive, is shown on Assessor’s Map 66 as Parcel 153, and as Lot 74 upon Land Court Plan No. 28933-L.

Staff Report as of 02/09/16

Evidence of owner's title is registered at Certificate of Title 25935 on file at the Nantucket County District of the Land Court. The site is zoned Residential 10 (R-10).

The applicant is seeking Special Permit relief pursuant to Section 139-16.C.(1) to reduce the side yard setback from 10 feet to 5 feet. In the alternative, the Applicant is requesting Variance relief from the intensity regulations in Section 139-16 to validate the air conditioning unit sited approximately 6.4 feet from the northeasterly side yard lot line.

Locus, an oversized (20,000 SF) lot in the R-10 district, contains a pre-existing nonconforming structure. At the time of construction of the original structure (1984) and the granting of a Certificate of Occupancy (1994), the Locus was zoned RC-2 where side yard setbacks are 5 feet. The structure was constructed and sited in accordance with said requirements. On the 1991 As-Built prepared by John Shugrue* in association with approval of the 1984 New Dwelling and the 1993 conversion of a portion of the garage into a 2nd dwelling, the structure is shown to be as close as 6.15 feet from the southwesterly side yard lot line and as close as 7.78 feet from the northeasterly side yard lot line. When the property was re-zoned to R-10 in 2007 (Article 31), where the side yard setback requirement is 10 feet, the structure was rendered pre-existing nonconforming.

* On the 2016 As-Built prepared by Alan Grady, the structure is shown to be as close as 5.7 feet from the southwesterly side yard lot line and as close as 6.4 feet from the northeasterly side yard lot line. The applicant, who acquired the property on January 7, 2016, states that the encroaching air conditioning unit was installed by a prior owner to replace a propane tank which is not shown on Shugrue's As-Built, whereas "Propane Tanks" are shown on Grady's As-Built.

HISTORY OF PREMISES ACCORDING TO THE BUILDING DEPARTMENT FILE:

All referenced documents are in your packet.

BLDG DEPT FILE #	WORK PERMITTED	CO #	OTHER INFORMATION
3402-84	Construct new SF DU w/garage Total proposed GC = 2,120 SF	3402-94	Zoned RC-2 (5' Setbacks) As-Built: 12/5/1991 Shugrue Total GC shown = 2,092 SF
10524-93	Convert 2 nd floor of garage into 560 SF 2 nd DU/garage apt. NO change in Footprint.	10524-94	Zoned RC-2 (5' Setbacks) As-Built: 12/5/1991 Shugrue <i>reapproved 1/18/1994</i>
303-15	Repair/Replace roof, sidewall, windows, doors and interior work. NO structural changes, NO change of use, and NO change in Footprint/GCR.	NONE	Zoned R-10 As-Built: 1/8/2016 Grady

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If the Board is not inclined to grant relief to reduce the northeasterly side yard setback from 10 to 5 feet, as allowed by Special Permit pursuant to Section 139-16.C(1) which states:

The Board of Appeals may grant a special permit to reduce the [...] 10 foot side and rear yard setback in [...] R-10 to 5 feet.

then Variance relief from the 5 foot setback requirement is requested in order to validate the location of the AC unit. A favorable decision would have to meet the threshold which requires that the Board:

[...] specifically finds that owing to circumstances relating to soil conditions, shape or topography of such land or structures but not affecting generally the zoning district in which it is located, a literally enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and the desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such bylaw.

Staff Report as of 02/09/16

- 08-16 Centre of Town, LLC 35 Centre Street Philbrick
Action deadline May 11, 2016 CONFLICTS: ET

Applicant is requesting the rescission of any conditions related to specific uses in prior Zoning Board of Appeals decisions. Variance relief pertaining to the rear yard setback shall remain in effect. The initial Variance, allowing construction of an office building within the rear yard setback, was further modified to validate the siting of mechanical units also within the rear yard setback. The current use (bakery with an on-site commercial kitchen and retail sales) and proposed use (addition of seating) of the property are allowed by right in the CDT. No exterior renovations are planned. The Locus is situated at 35 Centre Street, is shown on Assessor’s Map 42.3.1 as Parcel 3, and upon Plan File 44-A. Evidence of owner’s title is recorded at Book 1220, Page 86 on file at the Nantucket County Registry of Deeds. The site is zoned Commercial Downtown (CDT).

This is a request to modify by rescission prior Variance relief only as it pertains to the existing and proposed uses on the premises. Said uses – as a retail operation (baked goods and beverages are prepared and sold) with seating for patrons who wish to consume their purchases on site – are allowed by right in the CDT. However, the structure was granted Variance relief for a rear setback encroachment. This relief would remain in full force and effect. All prior decisions are in your packet.

The current intensity regulations for the CDT are:

District Defined in § 139-3	Minimum Lot Size (square feet)	Yard Setback			Ground Cover Ratio
		Front (feet)	Side/Rear (feet)**	Frontage (feet)*	
CDT	3,750	None	Side: none Rear: 5	35	75%