



Planning and Land Use Services

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

STAFF REPORT

Date: July 11, 2016

To: Zoning Board of Appeals

From: Eleanor W. Antonietti
Zoning Administrator

Re: July 14, 2016

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I. APPROVAL OF THE MINUTES: See Packet Part III

Pages 6 - 13 ▪ June 9, 2016

II. OLD BUSINESS:

See Packet Part III

- 66-00 Abrems Quarry (40B)
Vote to approve and sign Monitoring Services Agreement between Nantucket Zoning Board of Appeals and Nantucket Housing Authority and NHA Properties *d/b/a* Housing Nantucket.

Pages 15 - 36

FROM PRIOR STAFF REPORT:

This came about as a result of a request for action to be taken to address some grievances by residents of the Abrems Quarry 40B. In the process of trying to ascertain who the appropriate monitoring agent actually is, Staff determined that there was a necessity to make a concerted effort to evaluate the recorded documents in order to establish who the monitoring agent is and should be going forward. The Legal opinion, dated April 12th provided to Board in May and June packets, found that NHA Properties, *d/b/a* HousingNantucket, is and should continue to be the Monitoring Agent.

In response to this finding, Anne Kuszpa of HousingNantucket, submitted a draft Monitoring Services Agreement to Staff on April 13th. Staff in turn solicited comments and edits from Town Counsel. At the May 11th hearing under Other Business, the Board approved Housing Nantucket's proposed "re-sale fee" of 2.5% of the max sale price. The recorded Deed Riders had called for a "re-sale fee of 3/4 of 1% of the max re-sale price."

The Draft Monitoring Agreement represents suggested edits from Town Counsel and the Board's rejection of his suggestion to split the amended re-sale fee 50/50 between the seller and the buyer. The Board and Anne Kuszpa were opposed to this.

On July 6th, Staff submitted the latest draft of the Monitoring Services Agreement to Anne Kuszpa who had some questions and concerns regarding this most recent version. These were answered by Town Counsel on Friday, July 8th. However, Staff has not heard back from Anne Kuszpa as of publication of this report. The most recent version of the MassHousing Universal Deed Rider (attached as Exhibit A to the Agreement) indicates in the Definitions section ("Maximum Resale Price") that the Maximum Resale Price can include an add-on for the Resale Fee and other items (approved capital improvements and certain marketing expenses, (e.g; advertising). In some sense, therefore, the Buyer actually ends up paying the Resale Fee.

See Packet
Parts I & II

- 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 October 31, 2016 (180 days from Initial Public Hearing with Extension)
 Decision Action deadline December 12, 2016 (40 days from close of Public Hearing)
Conflicts: Geoff Thayer *Sitting Members:* ET LB MJO KK SM *Alternates* JM MP

EXCERPTED FROM PREVIOUS STAFF REPORTS:

The application requests numerous and wide-ranging waivers, from zoning standards, various permitting requirements, and financial obligations to the Town. Approval will require substantial modifications as to matters of density, massing, design, screening, layout, parking configuration, all of which relate to the public health and welfare and overall safety of the community. Town Counsel and the applicant disagree as to whether or not Town Meeting approval is required in order to connect to the local sewer, which may not even be able to support the proposed density.

**THE ORIGINAL SUBMISSION ENTAILED a total of:
5 buildings with 122 bedrooms on a 2 ½ acre site:**

- Two 3 ½ -story buildings
- Two 3-story buildings
- A 1-story Club house and pool
- 56 apartment units
 - 14 affordable
 - 42 market rate
 - Including a dedicated unit as housing for an on-site manager

OPTIONS ARE BEING EXPLORED RELATIVE TO VARIOUS DESIGN CONCERNS PERTAINING TO:

- **HEIGHT** The applicant could, for example, alter the design by creating garden-level apartments as opposed to full-basements. This would potentially minimize the mass of the building above 30-feet. They could also taper the roofline of dormers at a 30 foot height while allowing gable pitch above the 30-feet, or propose a mansard roof. In short, there are alternative designs to mitigate height that may be contemplated and suggested by the Board.
- **DENSITY**
 - The pool and fitness club, currently proposed as a separate building, could be incorporated in one of the apartment buildings at basement level. This would allow buildings to be more centrally located and increase buffers to surrounding properties.
 - Interior layout could be reduced by consolidating interior space (removing dens or 2nd full-bathrooms or walk-in closets). There could be more micro-units, or a different mix of units to accommodate smaller households.
- **AESTHETICS**
 - Balconies are a problematic design feature, although less so on the rear of the building where they are less visible. They are not found in any residential-style or multi-family

buildings on island. An alternative could be a simple community outdoor space or perhaps roof decks.

- The window and door arrangements are disorganized. There is a double gable facing Surfside Road. The rear façade of the 13-unit building seems to have more architectural continuity and should perhaps be replicated with the other buildings/elevations where possible.
- SCREENING Perimeter planting should be detailed with species comprised of a mixture of deciduous and coniferous plants to maximize a solid screen to abutting properties. Would solid board fencing on north and south perimeter be suitable screening, or would that involve too much maintenance ?
- PARKING Where possible, some of the parking could be located underground to move some of the surface-level parking from site.
- ON SITE TRAFFIC FLOW A one-way loop to keep incoming traffic separate from outgoing traffic could improve flow, site lines and visibility. Adding another access on west side of 13-unit building could be efficient.
- TRAFFIC MITIGATION
 - The community would benefit from a bike-path extension from Fairgrounds Rd. to front of this site to eventually connect to future bike path on northern side of Boulevard a bit further down Surfside Rd.
 - TRAFFIC STUDY (SEE Pages 50 – 72 of Packet Part I). Specifically, see Page 70 (or Page E-20 of the Traffic Study) regarding the deficient intersection. The Board could ask the applicant to pay for 3% (approximately \$30,000) of the cost of installing a round-about at the Fairgrounds and Surfside Rd. intersection.
- MISCELLANEOUS
 - Storage units will need to be restricted to residents only.
 - There is only one Dumpster which may not be adequate for the proposed density.
 - Are there elevators?

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The Board formally requested WRITTEN COMMENTS AND RECOMMENDATIONS FROM OTHER TOWN BOARDS which include:

- DPW
- Planning Board
- HDC
- Board of Water Commissioners
- Board of Health

Staff has obtained funds from the applicant and set up an Engineering Escrow account (53G) to cover costs of PEER REVIEW FROM:

- Traffic Study consultant to Town, Tetra Tech
- Engineering consultant, Ed Pesce
- 40B consultant, Edward Marchant
- Architectural / Design consultant, Cliff Boehmer of Davis Square Architects

Staff has obtained Town approval of a Request for Legal Services from Town Counsel for as-needed WRITTEN OPINIONS on various matters, most prominently that of the sewer connection process.

This application was continued from January to April hearing. A SITE VISIT took place on March 29th at which the applicant prepared the site with 'height balloons' and stakes and gave a detailed description of how the buildings will be situated on the locus.

REVISED LIST OF WAIVER REQUEST:

An updated list was received from the Applicant on 4/6. (See Pages 26 - 29 in Packet Part I.) Essentially, the revisions involve refinement and specification of waivers from Zoning By-law Sections :

- 139-16.A Intensity and dimensional requirements
- 139-17 Height limitation – proposed height is 55 feet
- 139-18 Parking – dimensional requirements as to parking space length
- 139-19 Screening requirements
- 139-26 WAIVER REQUEST eliminated

SEWER WAIVER:

There is a Memo (See Pages 148 - 156 in Packet PART II) received from the Applicant on 4/6 regarding the requested Waiver to allow applicant to connect to the existing sewer line *via* a new force main to be installed along Surfside Road & Fairgrounds Road. Applicant seeks to bypass the requirement to be able to do so by virtue of **both** approval at a Town Meeting and by the BOS acting as the Sewer Commission. Applicant asserts that, "Pursuant to Chapter 40B, the ZBA has the authority and exclusive jurisdiction to grant the Waiver" [...] "by issuing a comprehensive permit." Essentially, the applicant affirms that to deny the applicant the right to connect to the sewer district through a Waiver of the above-referenced statutory requirement would undermine the purpose and intent of Chapter 40B *"to reduce regulatory barriers that impede the development of [affordable] housing."*

There is also a legal opinion letter (See Pages 158 - 161 in Packet PART II) provided by Town Counsel on April 13th written in response to the above-referenced Memo.

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At the June 9th hearing, the applicant presented the proposal to install an ON-SITE WASTEWATER TREATMENT SYSTEM (Amphidrome®) which would accommodate up to 100 bedrooms, down from the originally proposed 122. The only concerns presented by Ed Pesce ^{Town Engineering consultant} were: 1) how they can fit the leaching for this in terms of setback requirements; 2) because there is a private well, they have to provide a nitrogen loading model relative to property boundary; and 3) they will need to demonstrate that they would not have a problem with other things like fertilizers.

WRITTEN COMMENTS & RECOMMENDATIONS FROM OTHER TOWN DEPARTMENTS:

Comments from Town Departments, Boards, and Commissions are included in your packet (See Pages 129 - 146 in Packet PART II). The letter submitted and signed by the BOS recommends that a Comp. Permit for the project be granted with certain conditions and goes on to raises 7 salient points:

1. Sewer District Issues
2. Sewer Costs
3. Water Infrastructure
4. Wellhead Protection District Issues
5. Public Safety Issues
6. Design Issues
7. Other Important Issues

Staff has not yet received comments and recommendations from the Planning Board or the NP&EDC. The Conservation Commission noted that the project is located outside of the Commission's jurisdiction and therefore, they have no specific recommendations at this time other than that proper handling of sewage, storm and surface waters is important and they would encourage that the design and construction of the potential development take that into account.

APPLICANT'S REPLY TO COMMENTS & RECOMMENDATIONS FROM TOWN DEPARTMENTS:

Applicant emailed a Memo (See Pages 148-156 in Packet PART II) received, 4/11. This Memo succinctly addresses the first 6 of the above-referenced points outlined in the BOS letter.

PEER REVIEW TRAFFIC REPORT:

A traffic engineer from Tetra Tech did attend the Site Visit on 3/29, accompanied by Transportation Planner, Mike Burns who also gave her a tour of the area. There was discussion of an option proposed by the Fire Dept for a 2nd driveway access that would also incorporate a one-way circulation pattern within the development. This was in response to the concern that Fire Dept vehicles would not be able to make turns within the development given the 2-way flow and narrow turning radii. There is also a concern regarding parallel parking within the circulation aisles if parking was ultimately inadequate for the site. Perhaps recommending “no parking” signage or pavement markings within the development could address this concern. One Board member voiced concerns about the intersection between Buildings C & B & E where there is also a playground. Cars and trucks would be backing into that entrance/exit area, which seems contrary to sound traffic and safety considerations. The original proposal has undergone some non-binding modifications in an effort to work cooperatively with the Board and the neighborhood. Some of these would entail less intensive parking.

The traffic study peer review required additional information from the applicant’s traffic consultant (Bristol). The Report submitted by Tetra Tech is on Pages 73-79 in Packet PART I. Bristol submitted a response to the report, found on Pages 80-84 in Packet PART I.

At the June 9th hearing, Nancy Doherty (TetraTech / Town Peer Traffic Reviewer) and Lloyd Bristol (applicant Traffic Consultant) each presented their Traffic Assessments to the Board. Nancy requested a plan that shows how the proposed crosswalk will actually connect to the existing bikepath in order to understand the sight lines and the overall impact (clearing vegetation, utility poles, right of way, maintenance needs). Generally, she wanted more information and a Concept Plan that shows what improvements would be needed and what they would look like (signing, profile line, grading ... clearing).

Mike Burns, the Town Transportation Planner, explained that there is a town bylaw requiring that every intersection should have clear and appropriate sight lines for safety.

The Board also asked the applicant to re-do the Traffic counts to incorporate Sachems Path and the projected improvements of the Boulevard. They further requested that the counts for Saturday, originally done in August from 10am to 2pm when most people are already at the beach and therefore not on the roads, be conducted as if they were a weekday.

As of publication of this report, no new information has been provided by the Applicant’s Traffic Consultant.

The Board asked Mike Burns to provide a traffic count to clarify the peaks on any given day and to indicate which are the highest traffic days. This has been included in your packet on Pages 85-90 in Packet PART I. This Memo also includes data regarding local population trends.

The Board and the Applicant agreed to hold a Work Session to discuss design alternatives beyond those most recently presented by the Applicant. Ed Marchant proposed inviting a design consultant, Cliff Boehmer, who specializes in 40B projects. The Applicant accepted this proposal as well as that a member from the neighborhood attend. The session was held on July 29th. As a result of this productive non-binding work session, the applicant has submitted several new concept plans.

POWER POINT PRESENTATION:

No new full scale plans have been received, but the Applicant will be making another Power Point presentation at the hearing. The specific ‘slides’ are included in your packet and may be found on Pages 162 - 179 in Packet PART II. There are some **important potential/proposed changes** shown therein, which incorporate the alternate concepts discussed at the **Work Session on July 29th** :

- 3 ALTERNATE SITE DESIGNS ARE PRESENTED:
 - 52 unit rental
 - Two 12-unit buildings
 - 28 townhomes MODELED AFTER NOBADEER MEETING HOUSE MAJOR RESIDENTIAL SUBDIVISION
 - 104 parking spaces at 2 per unit

- o 32 unit FOR SALE – Concept D
 - Four 4-plexes
 - 1 duplex
 - 14 single family homes
 - 64 parking spaces at 2 per unit
- o 32 unit FOR SALE – Concept E
 - 16 duplexes
 - 64 parking spaces at 2 per unit

- ❖ Cliff Boehmers comments regarding the 3 alternative Concepts were submitted after the packet was posted. They are included at the end of this report on Pages 13 -16.
- ❖ The applicant agreed to another Extension to October 31st for the close of the Public Hearing process. This was duly filed with the Town Clerk.

See Packet Part III

Page 38

- 16-16 Todd W. Winship & Elizabeth W. Winship and Bess W. Clarke, Tr., Sixteen Monohansett Road Trust
 16 Monohansett Road Brescher
 Action deadline July 20, 2016 *Sitting Members:* ET LB SM MJO KK

REQUESTED WITHDRAWAL WITHOUT PREJUDICE

Applicant is seeking relief by Variance pursuant to Zoning By-law Section 139-32 for a waiver of the ground cover ratio provisions in Section 139-16. Specifically, applicant seeks to validate enclosure of pool cabana breezeway which resulted in total ground cover ratio of 4.2% where 4% is maximum allowed. The Locus is situated at 16 Monohansett Road, is shown on Assessor’s Map 79 as Parcel 143, and as Lot 29 upon Plan File 11-A. Evidence of owner’s title is in Book 1503, Page 322 on file at the Nantucket County Registry of Deeds. The site is zoned Limited Use General 2 (LUG-2).

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FROM 5/11/2016 STAFF REPORT:

Applicant is seeking relief by Variance for a modest (180± SF) ground cover coverage. The locus is compliant in all other respects. The conversion of the structure – approved and built in 2005 as a “pool house/cabana” – into an enclosed structure resulted in a ground cover of 4.2% where 4% is allowed. The lot is oversized and is improved with 2 dwellings and the subject 3rd structure, as well as a small shed which, being under 200 SF, does not contribute towards ground cover. The applicant, who has a handicap which requires constant care, intends to convert the “pool cabana” into a tertiary dwelling to provide housing for a live-in home health aide, if Variance relief is granted to validate the ground cover excess.

UPDATE:

This hearing was not opened on June 9th. Applicant is now seeking to withdraw this application.

- 20-16 Gerald T. Vento & Margaret Vento, Tr. of Ninety-One Low Beach Road Nominee Trust
 Action deadline August 22, 2016 91 Low Beach Road Cohen
CONTINUED TO AUGUST 11, 2016 *Sitting Members:* ET LB KK GT JM

III. NEW BUSINESS:

See Packet Part III

Pages 41 - 68

- 15-16 Madaket Wheelhouse, LLC 13 Massachusetts Avenue Cohen
 Action deadline October 12, 2016 **THIS IS A RE-NOTIFICATION OF AN APPLICATION INITIALLY OPENED AT THE MAY 11TH MEETING.*
CONFLICTS: MJO *Sitting Members at prior hearings:* ET SM KK JM GT

Applicant is seeking relief by Special Permit pursuant to Zoning By-law Section 139-33.A in order to alter the pre-existing nonconforming dwelling and garage. Applicant proposes to build an addition to the southeast corner of the dwelling which will be no closer than the existing westerly side yard setback distance of 4.4 feet where minimum side yard setback is ten (10) feet. Other dimensionally compliant additions are also proposed to the dwelling. Applicant further proposes to convert the garage/cottage into a secondary dwelling. The expansion will not bring the structure any closer than the current easterly side yard setback

distance of 2.9 feet or the southerly front yard setback distance of 5.7 feet where minimum front yard setback is twenty (20) feet. The Locus is situated at 13 Massachusetts Avenue, is shown on Assessor’s Map 60 as Parcel 75, and as Lots 12-15, Block 29 upon Land Court Plan 2408-Y and unregistered land lying north of said Lots. Evidence of owner’s title is registered on Certificate of Title No. 25696 at the Nantucket County District of the Land Court and in Book 1494, Page 39 on file at the Registry of Deeds. The site is zoned Village Residential (VR).

FROM PRIOR STAFF REPORTS:

The property is improved with a dwelling and garage structure which are pre-existing nonconforming as to both side yard and front yard setbacks, but is conforming in all other respects. Applicant proposes to alter and expand both structures with small additions. The garage will be relocated such that the eastern side yard setback intrusion will be eliminated and the front yard setback intrusion will be reduced. The front yard setback cannot be cured due to the 10 foot scalar separation requirement for second dwellings.

The structures, as so altered, will not be any closer to the lot lines than they currently are, except for one of new outdoor shower enclosures – considered a “structure” – which will make the existing westerly side yard setback nonconformity worse. There are two new outdoor showers proposed, one on either side of the dwelling. The one on the east will be sited compliantly. The one on the west will be sited as close as .5 feet from the westerly lot line. Applicant states that the siting is restricted by wetland regulations.

A direct abutter submitted an email specifically in opposition to the above-referenced outdoor shower portion of the application. The comment was received today (after the deadline) due to delayed receipt of the notice because of an address change. The comment is:

I live at 15 Massachusetts Ave in Madaket and our property abutts #13 We would like to protest the location of the new outside enclosed shower that the owners are planning to build right at our property line , which is too much of an encroachment to our property . This is also a noise nuisance for us and we want it relocated to the eastern side of the renovated dwelling.

Thank you for your consideration of this issue Carol Shiff

[...]Many thanks for your assistance.

Carol Shiff

This is both a Special Permit, to alter pre-existing nonconforming structures, and a Variance (new outdoor shower enclosure) request. A favorable decision as to the latter 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 literal 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.

At the May 11th hearing, applicant’s representative explained that his client had bought the property last summer. The prior owner had permission to put in new septic system and she took out a betterment loan but the designer designed and installed it without proper permits. Meanwhile, the law changed such that the system was no longer legal and had to be ripped out and replaced with a tight tank, installed due to proximity to ocean. The main dwelling will have only an Outdoor Shower added as close a ½ foot from the lot line. There are strict rules about how much water flowage is allowed and the Board of Health has restricted the number of *en-suite* showers, thus an outdoor shower is proposed to compensate for inability to have desired number of indoor showers. It only counts as a structure for zoning purposes if it has a floor, which the applicant prefers. The Cottage/garage is proposed to be moved as much out of setbacks as possible and will be expanded with no change of use proposed. Overall ground cover will go up. The portion of the cottage which will remain within setback will be overhang and a small part of bldg.

Representative requested continuance to this meeting to discuss either removing floor from ODS – thereby removing it from needed relief – or relocating it, depending on ConCom parameters.

UPDATE:

At the June 9th hearing, applicant's representative explained that the client had altered the proposed project such that Variance relief would no longer be required and the work being proposed could be done through Special Permit relief only. The Board determined that the application needed to be re-noticed given the somewhat substantive changes, albeit changes that could be construed as less intensive in scope.

- 22-16 John N. Jordin & Julie M. Jordin 28 Lovers Lane Hanley
Action deadline October 12, 2016 CONFLICTS: LB

Pages 69 - 76

Applicant is requesting Special Permit relief pursuant to Zoning By-law Section 139-16.C to either reduce or validate unintentional side yard setback intrusions caused by the siting of an existing garage as close as 9.3 feet from the northerly lot line and an above-ground Jacuzzi tub as close as 8.2 feet from the southerly lot line, where a ten (10) foot setback is required. In the alternative, and to the extent necessary, Applicant requests relief by Variance pursuant to Section 139-32 to allow said setback intrusions. The Locus is situated at 28 Lovers Lane, is shown on Assessor's Map 68 as Parcel 145, and as Lot 90 upon Land Court Plan 16514-R. Evidence of owner's title is registered on Certificate of Title No. 20283 at the Nantucket County District of the Land Court. The site is zoned Residential 20 (R-20).

See above description for relief requested. Pursuant to Section 139-16.C(1) & (2) setback waivers are sought:

- The Board of Appeals may grant a special permit to reduce the 10 foot side yard setback and the 10 foot side and rear yard setback in R-20 [...] to 5 feet.*
- The Board of Appeals may grant a special permit to validate unintentional setback intrusions not greater than five feet into a required yard and not closer than four feet from a lot line, provided that it shall first find that the burden of correcting the intrusion substantially outweighs any benefit to an abutter of eliminating the intrusion and, if the intruding structure was so sited after 1990, the siting of the structure was reasonably based upon a licensed survey.*

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The Application materials submitted did not include Building Department or HDC submissions. The encroachments, while *de minimis*, are within both side yard setbacks. No opposition or concerns have been presented by abutters.

- 23-16 Mark Bono & Elizabeth Gilbert Bono, as Owner, and EK Associates, LLC, as Applicant
Action deadline October 12, 2016 15 Black Fish Lane Hanley
CONFLICTS: NONE KNOWN

Pages 77 - 89

Applicant is requesting Special Permit relief pursuant to Zoning By-law Section 139-16.C to either reduce or validate unintentional side yard setback intrusions caused by the siting of an existing garage as close as 9.5 feet from the easterly lot line, where a ten (10) foot setback is required. In the alternative, and to the extent necessary, Applicant requests relief by Variance pursuant to Section 139-32 to allow said setback intrusion. The Locus is situated at 15 Black Fish Lane, is shown on Assessor's Map 73 as Parcel 108, and as Lot 3 upon Plan No. 2007-55. Evidence of owner's title is in Book 1540, Page 9 on file at the Nantucket County Registry of Deeds. The site is zoned Sconset Residential 20 (SR-20).

See above description for relief requested. Pursuant to Section 139-16.C(1) & (2) setback waivers are sought:

- The Board of Appeals may grant a special permit to reduce the 10 foot side yard setback and the 10 foot side and rear yard setback in R-20 [...] to 5 feet.*
- The Board of Appeals may grant a special permit to validate unintentional setback intrusions not greater than five feet into a required yard and not closer than four feet from a lot line, provided that it shall first find that the burden of correcting the intrusion substantially outweighs any benefit to an abutter of eliminating the intrusion and, if the intruding structure was so sited after 1990, the siting of the structure was reasonably based upon a licensed survey.*

The Application materials submitted included a 2014 and two 2016 As-Built plot plans. The 2014 Final As-Built, prepared by BRACKEN, shows the garage structure to be a conforming 10.1 feet from the easterly side yard lot line. The 2016 Mortgage Inspection Plan, prepared by a different surveyor (EMACK), shows the garage to be 9.6 feet at its closest point. The 2016 Final As-Built, prepared by BRACKEN shows the stairs and platform on the northeast corner of the garage to be sited as close as 9.5 feet from the easterly side yard lot line. This is likely another case, of which the Board has encountered many, of varying surveyor techniques producing slight differences. The intrusion is less than a foot and, therefore, could be construed to be *de minimis*. One abutter from across the lane submitted a letter of approval.

- 24-16 6 Lily Street LLC & Sconset Partners LLC 6 and 8 Lily Street Dale
CONTINUED TO AUGUST 11, 2016 *CONFLICTS: NONE KNOWN*

Pages 91 - 92

Applicant is requesting Special Permit relief pursuant Zoning By-law Section 139-33 to reduce the area of 6 Lily Street without creating any new non-conformities and to enlarge the area of 8 Lily Street to allow for a new dwelling with a reduced side yard setback nonconformity. To the extent necessary, applicant further requests Site Plan Review pursuant to Section 139-23. Both properties are improved undersized lots of record. In the alternative, and to the extent necessary, Applicant requests relief by Variance pursuant to Section 139-32 from the provisions of Section 139-16. The properties are located at 6 and 8 Lily Street, are shown on Assessor's Map 73.3.1 as Parcels 109 and 110, and as Lot 5 and portion of Lot 7 upon Plan No. 2014-02. Evidence of owners' titles are in Book 1415, Page 296 and Book 1415, Page 287 on file at the Nantucket County Registry of Deeds. The site is zoned Sconset Old Historic (SOH).

- 25-16 George Gray, LLC 55 Union Street Alger
 Action deadline October 12, 2016 *CONFLICTS: NONE KNOWN*

Pages 93 - 107

Applicant is requesting Special Permit relief pursuant Zoning By-law Section 139-16.C(2) to validate the unintentional side yard setback intrusion of a dwelling sited as close as 4.8 feet from the southerly lot line, where a five (5) foot setback is required. Applicant further seeks clarification and correction of rear yard setback distance referenced in prior Zoning Administrator decision from 2.4 to 2.3 feet. The Locus is situated at 55 Union Street, is shown on Assessor's Map 55.1.4 as Parcel 89, and upon Plan No. 2014-92. Evidence of owner's title is in Book 1459, Page 294 on file at the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).

See above description for relief requested. Pursuant to Section 139-16.C(2) setback waivers:

The Board of Appeals may grant a special permit to validate unintentional setback intrusions not greater than five feet into a required yard and not closer than four feet from a lot line, provided that it shall first find that the burden of correcting the intrusion substantially outweighs any benefit to an abutter of eliminating the intrusion and, if the intruding structure was so sited after 1990, the siting of the structure was reasonably based upon a licensed survey.

This project was granted Zoning Administrator relief in 2014. Applicant maintains that during "the course of construction, which was reasonably based on a licensed survey, an underground cistern was encountered that had the unintended effect of changing the course of the wall, causing it to be about 0.2 feet (about 2.4 inches) into the setback in one corner."

- 26-16 Paul Benk and Lauri LeJeune Benk 8 North Gully Road Brescher
 Action deadline September 21, 2016 *CONFLICTS: MP*

Pages 108 - 142

Applicant is seeking relief by Variance pursuant to Zoning By-law Section 139-32 from the provisions of Section 139-16 to validate the siting of an existing shed/studio within the five (5) foot side and rear yard setbacks. Applicant requests further relief to allow alteration of said structure with the ground cover expansion taking place outside of the setback areas and small portion of upward expansion occurring within the easterly setback area. The Locus is situated at 8 North Gully Road, is shown on Assessor's Map 73.1.3 as Parcel 48, and upon Land Court Plan 38853-A. Evidence of owner's title is registered on Certificate of Title No. 24677 at the Nantucket County District of the Land Court. The site is zoned Sconset Residential 1 (SR-1).

See above description for relief requested. The locus, an undersized lot of record zoned SR-1, is improved with a dwelling and a shed/studio. The 575 square foot dwelling is pre-existing nonconforming as to both (east and west) side yard setbacks and benefits from prior relief in BOA Decision 009-99, granted to prior owner, which validated the conversion of a garage into a single family dwelling.

The existing shed/studio is nonconforming without benefit of prior relief, being sited 2.0 feet from the westerly lot line and 3.3 from the easterly lot line. A shed existed on the Locus as of February 25, 1999, which is shown as a compliant structure on a 1999 Building Location Plan. In 2007, the Applicants applied for two building permits. Building Permit 1320-97 to remove the compliant shed was completed. Building Permit 1321-97, however, was a permit to construct a 192 SF shed to be set on a 4-foot below grade foundation, and to comply with the (5) foot side and rear setback requirements. This permit was amended in 2008 to finish the interior by adding a full bath, installing insulation, wiring and plumbing.

Per the 2016 Existing Conditions Plan, the shed/studio is sited 2.0 feet from the westerly lot line and 3.3 feet from the easterly lot line where 5 foot setbacks are required pursuant to Section 139-16.C.(3) which requires that a lot zoned SR-1 that abuts two or more streets or ways must maintain a ten (10) foot setback from each street or way.

The Applicants are requesting Variance relief to validate the noncompliant siting of the shed/studio because the location must be approximately 10 feet from the leach pit for the existing septic system without Variance relief from the Board of Health.

VARIANCE CRITERIA

The decision would have to meet the threshold (established by MGL 40.A § 10 and locally per Section 139-32.A) 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 literal 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.

Several abutters have submitted letters in opposition to this project.

- 27-16 Kite Hill, LLC 5 Kite Hill Lane Reade
Action deadline September 23, 2016 CONFLICTS: MP MJO
- Applicant is seeking relief by Variance pursuant to Zoning By-law Section 139-32 for a waiver of the provisions in Section 139-16. Specifically, applicant seeks to reconfigure Locus by conveying portions of existing lots which comprise locus to 3 Kite Hill Lane and 86 Center Street. The conveyances will result in creation of new nonconformity relative to the shed’s siting from the easterly side yard lot line and will intensify the nonconforming regularity factor. The Locus is situated at 5 Kite Hill Lane, is shown on Nantucket Tax Assessor’s Map 42.4.4 as Parcel 65, and as upon Land Court Plans 15206-C and 15206-D. Evidence of owners’ title is on Certificate of Title No. 26033 at the Nantucket County District of the Land Court. The property is zoned Residential Old Historic (ROH).

This presents as a complex application in terms of reconfiguring several lots which abut Kite Hill Lane as part of a mutually satisfactory agreement between three property owners. The subject property, known as 5 Kite Hill Lane, includes the entire roadway (strictly speaking, it is an Easement) of Kite Hill Lane (KHL) as well as a narrow strip of land on the south side of KHL. The applicant is attempting to move the lot lines around sufficiently to add some land to two properties abutting KHL.

Pursuant to Section 136-16.D, the minimum regularity (‘r’) factor is .55. While the overall ‘r’ factor would be reduced from .297 to .198 as a result of the shifting of boundary lines, said ‘r’ factor for this lot may be

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considered artificial, because all of the land in the road is included in it. As a practical matter, the only part of the lot that is useable by the owner is the buildable portion, thus not including the “roadway” and the narrow strip. The re-configuration will result in further reducing the nonconforming ‘r’ factor, thereby increasing said nonconformity, and will create a setback nonconformity – the shed will be sited 2 feet as opposed to 6 feet from the easterly lot line – on the locus, but it will make the adjacent property less nonconforming by improving that lots westerly side yard setback. As such, the increase and creation of nonconformities requires Variance relief.

See Packet Part III

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- 28-16 Eric J. Rosenberg & Michele Kolb 7 Gardner Street Williams
Action deadline October 12, 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. Specifically, applicant seeks permission to demolish an existing garage, sited as close as 1.3 feet from the northerly side yard lot line where the minimum side yard setback is five (5) feet, in order to construct a new single-family dwelling in its place. The new dwelling is proposed to be sited three (3) feet from the northerly lot line and to be conforming as to all other setbacks, ground cover, and parking requirements. The Locus, an undersized lot of record created pursuant to M.G.L. Chapter 41 Section 81L, is situated at 7 Gardner Street, and is shown on Assessor’s Map 42.3.3 as Parcel 58 (portion). Evidence of owner’s title is in Book 1282, Page 80 on file at the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).

Applicants are seeking permission to demolish an existing metal/wood garage and construct a new single-family dwelling. The existing garage is sited as close as 1.3 feet from the northerly side yard lot line in the ROH district (minimum 5 foot side yard setback). The proposed dwelling would about 3 feet from the northerly side yard lot line, therefore further away, but would represent a vertical expansion within the setback area. The Locus as so altered would be conforming as to: 1) other yard setbacks; 2) groundcover requirements; and 3) parking.

The lot is grandfathered as undersized, containing 2,709 SF where minimum lot size is 5,000 SF, by virtue of 2012 Planning Board endorsement of a 41-81L division of land, based upon the existence (construction) of the single-family dwelling and the subject garage pre-dating Nantucket’s 1955 adoption of the subdivision control law. This plan has not been recorded with the Registry of Deeds as of date of publication of this Staff Report.

The use of the garage, an ancillary structure on a lot by itself, without a dwelling on the lot, is also nonconforming. Therefore, the proposed demolition and construction of the single-family dwelling would eliminate the use nonconformity. The height of the new dwelling will exceed that of the existing garage but will be no higher than other structures in the surrounding historic area. The project has received HDC approval.

Article 60, passed at the 2016 Annual Town Meeting, amended Section 139-33(A).3 to include the following highlighted language:

... Lots created pursuant to MGL c. 41, § 81P, based upon the exception in the clause of MGL c. 41, § 81L for lots containing two or more structures that predate the adoption of subdivision control in the Town, shall have the same status as preexisting, nonconforming lots, and any structures thereon, which predate the adoption of subdivision control in the Town, shall have the status of preexisting nonconforming structures. **The removal of structures to facilitate an alteration or change to an existing structure, the relocation of the structure upon the lot, or the construction of a new structure, shall not cause the lot to be merged with an abutting lot in common ownership, provided that the lot remains vacant for less than 6 months.**

Staff notes that the “Proposed Site Plan” does not bear a surveyor or architect stamp and has no indication of who prepared it. Several letters of opposition have been submitted by abutters.

- 29-16 Hans Dalgaard 65 Surfside Road Williams
Action deadline September 21, 2016 CONFLICTS: NONE KNOWN

Applicant is seeking relief by Variance pursuant to Zoning By-law Section 139-32 from the provisions of Section 139-16.A. Specifically, applicant is seeking to reduce the required northwesterly rear yard setback from ten (10) feet to approximately 6.7 feet at its closest point in order to allow construction of a duplex at the rear of the property. The Locus is situated at 65 Surfside Road, is shown on Assessor's Map 67 as Parcel 222, and as Lot B upon Plan Book 24, Page 63. Evidence of owner's title is in Book 1054, Page 312 on file at the Nantucket County Registry of Deeds. The site is zoned Commercial Neighborhood (CN).

The lot is currently improved with a mixed use structure (primary dwelling; apartment; bike rental/sales business, all as approved in prior Special Permit relief from the ZBA). Applicant is seeking Variance relief to permit the construction of a duplex – a portion of which will be within the rear setback. Multiple dwellings are an allowed use in the Commercial Neighborhood district. The property was formerly zoned RC-2 where setbacks were 5 feet. While the majority of the duplex would be sited outside of the required 10 foot rear yard setback area, one portion would be sited as close as 6.7 feet from the rear yard lot line. The project benefits from HDC approval

Staff notes that no surveyed plot plan was submitted with the application and the "Site Plan" that was submitted is for HDC purposes, having been prepared by an architect/designer.

IV. OTHER BUSINESS:

- 34-15 NHA Properties, Inc., *d/b/a* Housing Nantucket, School View Cottages Kuszpa
APPROVED FOR WITHDRAWAL WITHOUT PREJUDICE 7 Surfside Road
Vote to release remaining funds in Escrow account subsequent to payment of all outstanding invoices.

Ed Marchant recently submitted his final invoice for this project and there is money remaining in the escrow account which should be returned to the applicant.

- Election of officers (Chairman, Vice Chairman, Clerk)

Current officers are:

- Ed Toole as Chairman,
- Lisa Botticelli, as Vice-Chairman, and
- Susan McCarthy as Clerk.

V. ADJOURNMENT.



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Ross A. Speer, AIA
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July 9, 2016

Eleanor Antonietti, Zoning Administrator
Nantucket Planning Office
2 Fairgrounds Road
Nantucket, MA 02554

RE: Surfside Commons Concept Plans

Dear Eleanor:

Thank you for including me in the working session for the Surfside Commons development that happened on Wednesday, June 29. It was very good to observe the willingness of the developer to consider alternative plans, and I think the discussions were productive and may lead to a plan that will better balance the needs of the community and developer.

My understanding is that there will be consideration of the alternate plans at a meeting of the Zoning Board of Appeals this coming Thursday, July 14th. While I will not be attending that hearing, I'd like to offer a few thoughts on the rendered options that you emailed me yesterday.

I know you understand that I have had very limited time to consider all of the aspects of the proposed development, and have had very little direct contact with the neighbors, ZBA members, you and your staff, etc. So please take these comments as primarily aimed at physical design aspects. And of course, they are only comments on the site plans, as we don't know what the proposed buildings would look like.

Please contact me if you have any questions. I know you are going on leave, so the invitation extends to Leslie Snell as well.

Sincerely,
DAVIS SQUARE ARCHITECTS, INC.

Clifford Boehmer, AIA, President

Encl: 3 pages, Concept Plans with comments



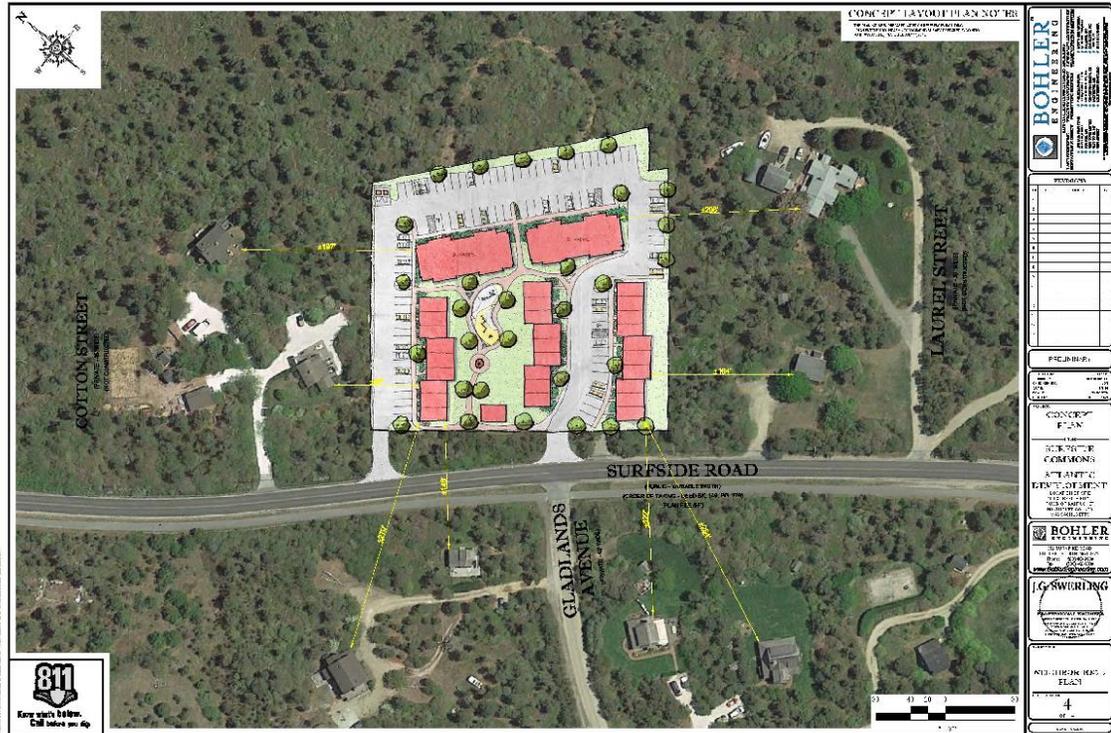
Scheme A: Home Ownership model consisting of fourteen single family homes, four 4-family structures, and one 2-family structure (total of 32 units)

Pros:

- All facades facing the road are small-scale, “contextual”
- Small scale buildings on street provide some screening of larger structures
- Layout of buildings is “casual”, has familiar, intimate feeling
- Main entry drive with parallel parking and walkways on both side is “street like”
- Variety of building scale and type create internal visual interest
- Overall site density lower than original proposal

Cons:

- Very little screening from neighbor to northwest
- Minimal spacing between buildings not of programmable scale
- No larger scale “public green” exterior space
- Cars circulation throughout site dominates plan
- Paving highest percentage of site and significantly greatest lineal feet of three options (all parking single loaded and laid out circuitously, paving on both sides of almost all buildings)
- Dead end parking may not be acceptable to fire department, problematic for residents when full
- Limited opportunity for single family homes to enjoy privatized outdoor space
- Parking lining perimeter of site breaks up continuity with open space outside of site, limits on-site landscape screening opportunities
- For sale project minimizes contribution to affordable inventory



Scheme C: Rental model consisting of 28 townhomes and two 12-unit structures (total of 52 units)

Pros:

- All facades facing the road are small-scale, contextual
- Small scale buildings on street provide some screening of larger structures
- Variety of housing types create visual interest
- All townhomes can have privatized back yard space
- Single loaded driveways with continuous walkway can feel more “street like”
- Concentrating outdoor spaces into large shared public green space provides significant amenity for residents (e.g., tot lot, passive recreation, etc.)
- Loop road plan very good for emergency vehicles (and if made one-way, maybe angle parking, could reduce paved area of site)
- Rental project provides highest percentage contribution to affordable inventory

Cons:

- Very little screening from neighbor to northwest (plan could be pushed in opposite direction to create some landscape buffer space)
- Scheme has largest buildings of three options (although could be improved by modulating footprint and putting third floor units within sloped roof space with dormers, i.e., 2-1/2 story)
- Large parking area at rear of site, while most efficient, is least “hospitable” to residents (consider breaking up large area with variety of paving materials distinguishing drive lane and parking spaces, “overflow” parking paved in grow-through pavers, size half of spaces for compact cars, etc.)
- Parking lining perimeter of site on two sides breaks up continuity with open space outside of site, limits on-site landscape screening opportunities