



# Planning and Land Use Services

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

## STAFF REPORT

Date: January 10, 2017

To: Zoning Board of Appeals

From: Eleanor W. Antonietti  
Zoning Administrator

Re: January 12, 2017

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THE FOLLOWING AGENDA ITEMS WILL BE DISCUSSED JANUARY 12, 2017.

HOWEVER, IF NO QUORUM CAN BE ESTABLISHED AT THAT TIME,

EFFECTED APPLICATIONS WILL BE CONTINUED TO 12:00 PM ON TUESDAY, JANUARY 17, 2017:

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I. APPROVAL OF THE MINUTES:

- December 8, 2016

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II. OLD BUSINESS:

- 41-16 Linda Mason 23 Monomoy Road Beaudette  
Action deadline March 8, 2017  
*Sitting* ET LB SM KK *Alternates* JM GT *CONFLICTS:* MJO MP  
Applicant is seeking Special Permit relief pursuant to Zoning By-law Section 139-33.A to allow an increase in the pre-existing nonconforming ground cover ratio upon the pre-existing nonconforming locus. The proposed work consists of removing the pre-existing nonconforming dwelling and replacing it with a larger dwelling which will be sited so as to cure the nonconforming side and front yard setbacks. The Locus is situated at 23 Monomoy Road, is shown on Assessor's Map 54 as Parcel 205, and as Lot 17 upon Land Court Plan 10937-C. Evidence of owner's title is registered on Certificate of Title No. 22059 at the Nantucket County District of the Land Court. The site is zoned Limited Use General 1 (LUG-1).

**FROM PRIOR STAFF REPORT:**

The locus is pre-existing nonconforming as to lot size, ground cover ratio, and front and side yard setbacks. The lot contains 12,695 SF in LUG-1 where minimum lot size is 40,000 SF. The front yard setback is 33.8 feet where minimum front yard setback is 35 feet. The northerly side yard setback is 9 feet where minimum side yard setback is 10 feet. The existing roof peak is shown to be

40.5 feet on the Existing Conditions Plan. The existing dwelling contains 1,810 SF for a GCR of 14.3% where maximum GCR allowed is 7%. The maximum allowed in accordance with 7% GCR would be 888 SF. The maximum allowed on an undersized lot of record in LUG-1 is 1,500 SF pursuant to Section 139-33.E(1)(b) which reads:

*In the case of a lot containing at least 5,000 square feet, 1,500 square feet of ground cover or the amount determined in accordance with the maximum ground cover ratio requirement for the zoning district in which the lot is situated, whichever is greater. In the LUG-2 and LUG-3 Districts only, a lot containing at least 40,000 square feet shall be permitted 2,000 square feet of ground cover or the amount determined in accordance with the maximum ground cover ratio requirement for the zoning district in which the lot is situated, whichever is greater.*

The applicant requests relief to allow the demolition or removal of the existing dwelling and replacement thereof with a larger house. The newly constructed house is proposed to be sited 35 feet from the front yard line and 10.5 feet from the northerly side yard lot line, thus curing those setback nonconformities. The new structure is proposed to contain 2,245 SF for an increase of 435 SF and an increased GCR of 17.7%. The new ridge height is proposed to be approximately 29 feet 3 inches.

This is a request to allow an increase of the pre-existing nonconforming ground cover ratio from 14.3% to 17.7%. Specifically, applicant seeks relief pursuant to Section 139-33.A(2) which reads:

*An extension, alteration, or change to an existing structure or a new structure that will result in an increase in the pre-existing nonconforming ground cover ratio of a lot may be allowed through issuance of a special permit, provided that the special permit granting authority makes the following findings:*

- a) The increase in ground cover ratio will not be substantially more detrimental to the neighborhood than the existing nonconformity;*
- b) The resulting ground cover ratio is consistent with the character of the surrounding neighborhood; and*
- c) The extension, alteration, or change to the existing structure or the new structure is conforming to other dimensional requirements of this chapter.*

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Owner has HDC approval for demolition or removal (move-off) of the existing structure (COA 66951 granted on 11/15/2016). The building was built circa 1947 according to COA 66951. There is one abutter who submitted a comment which is included in the revised and updated packet posted 1/10/2017.

UPDATE:

The applicant's representative has requested that this matter be continued to the January 17<sup>th</sup> meeting.

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**III. NEW BUSINESS:**

- 24-16      6 Lily Street LLC & Sconset Partners LLC      6 and 8 Lily Street      Dale  
**REQUEST TO WITHDRAW WITHOUT PREJUDICE**

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).

- 36-16 Loren H. Kroll and Norma J. Goldman 24 Coffin St. Beaudette  
**REQUEST TO CONTINUE TO 2/9/2017** CONFLICTS: NONE

Applicant is requesting Special Permit relief pursuant Zoning By-law Sections 139-30.A and 139-16.C(2) to validate an unintentional side yard setback intrusion caused by the siting of a porch 9.5 feet from the side yard lot line abutting West Sankaty Street, where a ten (10) foot setback is required pursuant to Section 139-16.C(3). 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 24 Coffin Street, is shown on Assessor's Map 73.4.1 as Parcel 52, as Lot 2 upon Plan No. 2012-37. Evidence of owner's title is in Book 1456, Page 168 on file at the Nantucket County Registry of Deeds. The site is zoned Sconset Residential 1 (SR-1).

This matter was originally intended to be opened at the November 10, 2016 hearing but has been continued for 2 consecutive months. On 1/10/2017, the applicant submitted a letter requesting another continuance to February 9, 2017. The letter is included in the revised and updated packet posted 1/10/2017.

- 40-16 Sankaty Head Golf Club 100 Sankaty Road Dale  
 Action deadline April 12, 2017 CONFLICTS: ET

Applicant is requesting modification of prior Special Permit relief to alter and expand a pre-existing nonconforming use in order to construct four new cottages to be used for on-site employee housing pursuant to Zoning Bylaw Section 139-33.A(1). The proposed work will meet all dimensional and parking requirements of the Bylaw. In the alternative, Applicant requests modification of prior Variance relief to allow the proposed project. The Locus is situated at 100 Sankaty Road, is shown on Nantucket Tax Assessor's Map 49 as Parcel 2, and as Lot 2A on Land Court Plan 9548-C. Evidence of owner's title is registered as Certificate of Title No. 1308 in the Nantucket County District of the Land Court. The site is zoned Limited Use General 3 (LUG-3).

Prior Variance, Special Permit, and Zoning Administrator DECISIONS are found on Pages 47 – 66 of the Packet.

Applicant is requesting approval to construct 4 new residential structures ("cottages") which will result in an extension/expansion of the pre-existing nonconforming use created by the existence of greater than three dwellings upon the premises. All residential structures are accessory to the primary use of the property as a private golf club or recreational facility which has existed on the site since c. 1921, well before the 1972 local adoption of the Zoning By-law. The 4 proposed structures will be for the exclusive use of on-site employee housing. The structures will be dimensionally compliant as to all zoning requirements of the underlying LUG-3 district and additional required parking will be provided.

THERE ARE TWO OPTIONS IN TERMS OF THE REQUESTED RELIEF:

OPTION 1: MODIFY PRIOR SPECIAL PERMITS

Pursuant to Zoning By-law Section 139-33.A(1), make a finding that a modification to prior Special Permit relief to allow the extension of the preexisting nonconforming residential use would not be substantially more detrimental to the neighborhood than the existing use and would be in harmony with the general purpose and intent of the Zoning Bylaw.

**STAFF RECOMMENDS THIS OPTION.**

The prior Special Permits, as modified, allowed for similar extensions/expansions to provide new or improve existing employee housing.

OPTION 2: MODIFY 1983 VARIANCE

The threshold (established by MGL 40.A § 10 and locally per Section 139-32.A) for Variance relief 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.*

Pursuant to Zoning By-law Section 139-32.A(1), a modification to prior and previously modified Variance relief – granted to permit a dormitory for “female summer service employees” – to allow the extension of the preexisting nonconforming residential use would be based upon the same criteria as the 1983 decision.

Applicant maintains that the provision of this additional housing will be an overall benefit to the surrounding area and the island by virtue of creating suitable and affordable housing for summer employees and by reducing traffic and congestion created by employees coming from other areas where they may find housing. Applicant further explains that a denial of the ability to provide “adequate and affordable” on-site housing, an exceedingly and increasingly scarce commodity, would create a clear hardship. It could be further argued that a denial could exacerbate the perennial problem of creating hiring incentives with the provision of housing.

Some of the various decisions do contain restrictions on occupancy (as well as other aspects of the proposals) which the Board may want to consider including in this decision. Staff is unclear as to exactly how many employees are intended to be housed in the new structures but there is mention of two new 6-bedroom septic systems to be installed in connection with the 4 “cottages”.

Buildings #1 & 2 benefit from HDC approval by virtue of Certificates 66788 and 66789, respectively. According to applicant’s representative, SHGC plans to construct these 2 dwellings in Spring 2017 and the 2 remaining dwellings in Spring 2018. COAs and plans are found on Pages 72-81 of the Packet.

As a point of information only, the applicant may also be eligible – but did not request – for new Special Permit relief to allow EMPLOYER DORMITORIES, defined in Section 139-2.A as:

*A dwelling on a lot occupied by a legally permitted or nonconforming commercial or nonprofit recreational use, or on an adjoining lot under the same ownership, all located outside of the TOD in which sleeping accommodations for more than five persons are provided by one or more employers, with occupancy limited solely to their employees.*

This particular use is allowed in LUG-3 with Special Permit relief.

- 01-17 Ronald W. Winters and Ellen H. Winters 12 Gardner Street Winters  
 Action deadline April 12, 2017 CONFLICTS: NONE  
 Applicant is seeking Special Permit relief pursuant to Bylaw Sections 139-7(a), 139-30, and 139-33.A to allow the change of use of a pre-existing nonconforming garage structure to a residential use with an expansion of the footprint. Applicant proposes to convert the garage, which is pre-existing nonconforming as to side and rear yard setbacks, into a second dwelling and build a

conforming 187 square foot addition. The garage, as so altered, will not be any closer to the side or rear yard lot lines. The Locus is situated at 12 Gardner Street, is shown on Assessor's Map 42.3.3 as Parcel 12, and upon Land Court Plan 21923-A. Evidence of owner's title is registered on Certificate of Title No. 24714 at the Nantucket County District of the Land Court. The site is zoned Residential Old Historic (ROH).

Applicant is seeking approval to convert a pre-existing nonconforming garage structure into a residential use as a secondary dwelling and to allow for the alteration and expansion of said structure. The structure is sited within both the northerly rear and westerly side yard setbacks where 5 foot setbacks are required. Although the applicant proposes an approximately 16" vertical extension of the structure within the setbacks, the encroachments will not be made worse and the proposed addition will be on the compliant easterly elevation of the structure and entirely outside of the setback. There are currently 3 nonconforming structures on the premises including the subject garage, a primary dwelling sited within the easterly side yard setback and a Zoning Shed sited within the southerly side yard setback. The Locus is and will remain compliant as to lot area (8,184 SF) and ground cover. The total parking requirement including the proposed addition of a 2<sup>nd</sup> dwelling will be 2 spaces. Although parking spaces are not delineated on the Plot Plan submitted with application, found on Pages 88-89 of Packet, the premises appear to support this requirement. Applicant obtained Planning Board approval for the proposed Second Dwelling at the November 30, 2016 meeting. However, the Applicants also required a Special Permit for waivers from the required driveway and apron width allowed pursuant to Section 139-20.1(B) governing Driveway Access. The Planning Board granted a Special Permit (PB File #03-17) at its meeting on 1/9/2017. Therefore, applicant has obtained required waivers pursuant to Section 139-20.1(C):

*The Planning Board may grant a waiver to any of the requirements of this § 139-20.1 through the granting of a special permit, provided that, in addition to finding that the requirements of § 139-30 have been satisfied, the Board finds that the granting of the special permit would not have a significant and adverse effect on the scenic or historic integrity of the neighborhood, and is not contrary to sound traffic and safety considerations.*

Staff recommends approval.

- 02-17 R. Eric Kennedy and Jacqueline W. Kennedy, as Co-Trustees, Into The Mystic Nominee Trust 189 Polpis Road Alger  
Action deadline March 27, 2017 **CONFLICTS: NONE**  
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 the various structures upon the premises already granted Certificates of Occupancy but shown on most recent As-Built survey to have a total ground cover ratio of 3.03% where 3% is maximum allowed. In the alternative, applicant requests a finding that no relief is necessary either by virtue of the definition of ground cover or the *de minimis* nature of the overage. The Locus is situated at 189 Polpis Road, is shown on Assessor's Map 45 as Parcel 5.2, and as Lot 2 upon Plan File 9-A. Evidence of owner's title is in Book 1103, Page 85 on file at the Nantucket County Registry of Deeds. The site is zoned Limited Use General Three (LUG-3).

Applicant is seeking either a Variance to validate a slight (.03%) overage in ground cover ratio OR a finding that no relief is necessary. The premises is improved with a main dwelling, a garage/workshop/studio, and a studio, all of which benefit from duly issued Certificates of Occupancy and which have remained in their same location since said issuance.

**See TABLE below:**

Structure	Bldg Permit #	Ground Cover per 2016 As-Built*
Primary DU	14698-97	2,320± SF
Garage/Workshop with Studio	14699-97	1,230± SF
Studio	74-10	520± SF
<b>TOTAL GC =</b>		<b>4,070± SF or 3.03%</b>
Maximum GCR in LUG-3 = <b>3% of 134,323 SF</b> <sub>lot area</sub>		→ <b>Max. GC = 4,029 SF</b>

\*As shown on the As-Built, dated 12/12/16, (SEE PAGE 103 OF PACKET):

The Locus and structures thereon are otherwise dimensionally compliant. The structures were constructed with the benefit of building permits – and received Certificates of Occupancy – and no action to force the removal, alteration, or relocation of the structure was taken within the six years since the issuance of the building permit relative to the violative work, therefore the structures are deemed protected. Although the structures upon the Locus are protected from removal, alteration, or relocation to comply with the intensity regulations of the Zoning Bylaw, the locus is deemed noncompliant because it violates the intensity regulations of ground cover. Therefore, the Applicant is requesting Variance relief pursuant to Section 139-32 from the intensity regulations in Section 139-16 to validate the ground cover on the Locus of approximately 4,070 SF, per the most recent As-Built. This results in a ground cover ratio of 3.03% where the maximum allowable ground cover ratio is 3% in the LUG-3 district.

Applicant notes in the addendum, found on Page 101 of the Packet:

*The ground cover issue appears to stem from failure of two separate surveyors, one in 2003 and the other in 2010, to include the dormers over the porches on the main dwelling in the ground over calculation. The issue was discovered in 2016 when a third surveyor prepared a plan and included the dormers in the ground cover calculation.*

The 2003 As-Built, found on Page 104 of the Packet, shows the main dwelling to have a ground cover of 2,256 SF and a “garage/dwelling”, which corresponds to the garage/workshop, to have a ground cover of 1,252 SF. The 2010 As-Built, found on Page 105 of the Packet, shows all 3 existing structures but does not give an individual breakdown of each structure’s ground cover, yet alleges an overall GCR of 2.98% as part of the Zoning Classification chart which also, erroneously, notes allowable GCR as 50%.

There is no provision in the by-law for Special Permit relief to validate a ground cover overage caused by putative surveyor error, as may be sought in the case of “inadvertent setback intrusions”, pursuant to Section 139-16.C(2):

*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 Board recently (June 2016 relative to 12 Pond View Drive) granted a similar type of Variance relief for a comparably slight overage on the basis that owing to the unique circumstances relating to the shape of such structures and especially affecting such structures but not affecting generally the zoning district, a literal enforcement of the intensity regulations would involve substantial hardship, financial or otherwise, to the petitioner and the desirable relief could be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such bylaw.

- 03-17 Marie E. Lemberg 53 Pochick Avenue Wilson  
Action deadline March 27, 2017 CONFLICTS: NONE

Applicant is seeking relief by Variance pursuant to Zoning By-law Section 139-32 for a waiver of the intensity regulations in Section 139-16 in order to render the subject lot separately marketable and buildable from abutting property at 55 Pochick Avenue. The Locus is nonconforming as to lot size and groundcover, but is otherwise dimensionally conforming. The Locus is situated at 53 Pochick Avenue, is shown on Assessor's Map 79 as Parcel 127, and as Lots 1-4 on Block 164 in Plan Book 2, Page 61 and as Parcel One on Plan No. 2010-52. Evidence of owner's title is in Book 1285, Page 214 and Book 1418, Page 154 on file at the Nantucket County Registry of Deeds. The site is zoned Limited Use General One (LUG-1).

The Locus is nonconforming as to lot size, containing 15,304± SF of lot area where minimum lot size is 40,000 SF and as to groundcover with the dwelling containing about 2,791 SF in a district that allows a maximum groundcover of 1,500 SF or 7%, whichever is greater. The lot is conforming as to the setback and frontage requirements.

**See ADDITIONAL COMMENTS BELOW. This application is related to 04-17.**

- 04-17 Venividivici Property Development, Inc. 55 Pochick Avenue Wilson  
Action deadline March 27, 2017 CONFLICTS: NONE

Applicant is seeking relief by Variance pursuant to Zoning By-law Section 139-32 for a waiver of the intensity regulations in Section 139-16 in order to render the subject lot separately marketable and buildable from abutting property at 53 Pochick Avenue. The Locus is nonconforming as to lot size and setback but is otherwise dimensionally conforming. The Locus is situated at 55 Pochick Avenue, is shown on Assessor's Map 79 as Parcel 76, and as Lots 5-11 on Block 164 in Plan Book 2, Page 61. Evidence of owner's title is in Book 1458, Page 291 on file at the Nantucket County Registry of Deeds. The site is zoned Limited Use General One (LUG-1).

The Locus is nonconforming as to lot size, containing 15,823± SF of lot area where minimum lot size is 40,000 square feet and as to setback with a side patio/deck area providing access to the back of the cottage sited as close as 7.9 feet from the easterly side yard lot line where minimum setback distance is 10 feet. The lot is conforming as to frontage requirements. There is a notation on the plan that a nonconforming shed in the southeast corner "*must move to conform to zoning*".

The definition of Ownership in the local By-law was modified by virtue of passage of Article 65 at 2015 ATM, in contravention to case law which has generally indicated that ***separate ownership and control*** are required to prevent the merger of undersized vacant lots in common ownership.

The definition added to Section 139-2 reads:

*OWNERSHIP Record title to land, as shown upon deeds or other muniments of title on file at the Nantucket Registry of Deeds, the Nantucket Registry District of the Land Court, the Registries of Probate, or other applicable public offices.*

**THE CHAIN OF TITLE IS AS FOLLOWS:**

<b>53 POCHICK</b>			
OWNER	YEAR acquired	Book/Page	Deed Reference
Marie LEMBERG	2013	1418/154*	Release Deed
Marie LEMBERG	2011	1285/214	Paper Street Parcel
Marie E. LEMBERG	1992	390/169*	Parcel One
NANTUCKET BANK	1991	358/83*	Parcels One & Two
Elizabeth REZENDES, Tr.	1987	287/273**	

\*Property description is Lots 1-4 in Block164  
*Parcels One & Two* ↔ \*\*Property description is Lots 1-11 in Block164

<b>55 POCHICK</b>			
OWNER	YEAR acquired	Book/Page	Deed Reference
Venividivici Prop. Dev. Inc.	2014	1458/291*	
Edwin A. LEMBERG	1992	390/171*	Parcel Two
NANTUCKET BANK	1991	358/83*	Parcels One & Two
Elizabeth REZENDES, Tr.	1987	287/273**	

\*Property description is Lots 5-11 in Block164  
*Parcels One & Two* ↔ \*\*Property description is Lots 1-11 in Block164

As shown above, 53 & 55 Pochick were in common ownership in 1987. Selling them as separate lots could be construed as creating an illegal subdivision. This application is seeking to cure this and validate the lots – with their respective nonconformities – as separately buildable and marketable, despite the history of common ownership during the regime of zoning.

There is a Certificate of Non-Contiguous Ownership pertaining to 55 Pochick issued by Attorney Richard Glidden in 1992. Applicant’s electronic application submission did not include the complete document. It is included at the end of this Report.

Essentially, the lots required subdivision control which was handled at the Planning Board meeting on 1/9/2017 when they endorsed 2 ANR perimeter plans (PB# 8066 & #8067, respectively which match the plans submitted with the application) for each of the subject lots.

**BUILDING HISTORY OF 55 POCHICK PER ADDENDUM:**

*Marie Lemberg obtained a validly issued building permit to construct a single-family home without comment from the Building Department in 1993 that there may be a merger issue with 55 Pochick Avenue. Subsequent permits were issued also without comment. Separate tax bills were sent, creating a separate identity from 55 Pochick Avenue which exists to the present.*

**BUILDING HISTORY OF 53 POCHICK PER ADDENDUM:**

*Edwin Lemberg obtained validly issued building permits to construct a cottage (1992) and a primary single-family dwelling (1995) without comment from the Building Department that there may be a merger issue with 53 Pochick Avenue. Subsequent permits were issued also without comment. Separate tax bills were sent, creating a separate identity from 53 Pochick Avenue which exists to the present.*

As further stated in the Addendums for both lots:

*The Zoning Board of Appeals has granted similar relief on many occasions over time and could support a grant of relief based on the unique circumstances affecting these lots, separate histories, shape of the lot, topography of the structure and extreme negative financial hardship that would be created should the Board require re-merger of the two (2) parcels. Further, there would be an increase in the nonconformity should merger be required resulting in three (3) dwelling units on one (1) parcel. There*



*would be no detriment to the public good with allowing the two (2) properties to remain separately marketable and buildable as the situation has existed without negative impact since the dwellings were constructed on the lots, at least 24 years ago. There are other similarly sized lots along Pochick Avenue.*

**IV. OTHER BUSINESS:**

- 076-11 Sachem’s Path Nantucket, LLC Sachems Path 40B Singer  
 Extended Action deadline January 26, 2017 – for decision on Conditions F.2, F.19(m), & proposed new Condition F.35 regarding Fee Waivers  
 Extended Action deadline February 9, 2017 – for Condition F.7 regarding timing of infrastructure  
 Sitting ET MJO SM KK JM Alternates LB GT **CONFLICTS: NONE**  
 Applicant seeks determination that proposed construction protocol changes to the Comprehensive Permit may be considered insubstantial pursuant to 760 CMR 56.05 (11)(a)(b), and as such, may be authorized by the Zoning Board of Appeals and incorporated into the Comprehensive Permit, as previously amended and restated. The proposed changes pertain to Phase 2 of the 40B development located on Surfside Road.

**FROM PRIOR STAFF REPORT:**

The developer is planning to begin PHASE 2 construction of the Sachems Path 40B. 16 Building Permits were pulled in connection with PHASE 1.

In association with Phase 2, the developer is proposing to modify CONDITION F(2) by deleting the following sentence:

*The Town may withhold the issuance of building permits beginning with the building permit request for the 26<sup>th</sup> dwelling if 2 of the 4 dwellings anticipated to be constructed by Habitat have not received Certificates of Occupancy and been sold to households that satisfy Chapter 40B eligibility requirements.*

The developer is proposing to modify CONDITION F(7) by deleting the following sentence:

*Except as provided herein, no building permits for dwellings within Phase 1 and Phase 2, respectively, shall be issued until the infrastructure for the respective phase, including but not limited to water, sewer and electrical utility connections; curbing; sidewalks; common mailboxes; and all but the top coat of street pavement (the finish coat) has been completed.*

The 3<sup>rd</sup> request is simply to incorporate a previously approved change which was not heretofore incorporated.

The 4<sup>th</sup> request is to waive the water & sewer connection and Building Permit fees. This request stems from a “budget shortfall”.

**Comments from Edward Marchant via email:**

*Based upon my preliminary review of the Sachem's Path Modification Request materials submitted on behalf of HAC, it appears to me that the requested modifications could not be classified as Insubstantial Changes--especially given that HAC is requesting that the ZBA agree to "waive" approximately \$200,000 of building permit and water and sewer connection fees. Based upon my prior experience with the Board, I believe that the Board has not been willing to act unilaterally on behalf of the Town re: the waiver of any standard Town fees. The Board may also feel that some of the other proposed modifications are Substantial.*

*As you are aware and as we have discussed, within 20 days of the date that the Modification Request was submitted, the Board must make a decision as to whether the requested modifications are Insubstantial or Substantial. However, you have received an extension to December 8, 2016 for the Board to make this determination.*

*If the Board feels that the requested modifications are Substantial, the Board must then schedule a Public Hearing within 30 days of December 8, 2016, providing proper legal notice and abutter notice, as is required for initial 40B public hearings. It is my understanding that you may also ask for an extension for scheduling any such public hearing so that you can conduct it during the regularly scheduled January 12, 2017 Board meeting.*

*Based upon my preliminary review, I anticipate that the Board will also be asking HAC to provide additional information so that the Board can better understand the modification requests.*

*I expect that I will be able to provide further input to the Board after my conversation with Kevin Maguire re: the Modification Request.*

**UPDATE:**

The applicant came before the Board at the December 8<sup>th</sup> meeting to request approval of 4 amendments to the Comprehensive Permit pursuant to 760 CMR 56.05(11) which reads:

(11) Changes after Issuance of a Permit.

(a) If after a Comprehensive Permit is granted by the Board, including by order of the Committee pursuant to 760 CMR 56.07(5), an Applicant desires to change the details of its Project as approved by the Board or the Committee, it shall promptly notify the Board in writing, describing such change. Within 20 days the Board shall determine and notify the Applicant whether it deems the change substantial or insubstantial, with reference to the factors set forth at 760 CMR 56.07(4).

Two of the four requested changes were found to satisfy these criteria. Of the remaining two requested changes, the Board voted to:

1. Continue the discussion of the request to change Condition F(7) regarding installation of infrastructure during Phase 2; and
2. Defer the Fee Waiver request to the Board of Selectmen for a positive recommendation prior to incorporating a new condition into the Comp. Permit.

Applicant went before the Board of Selectmen at their December 21<sup>st</sup> meeting to seek a positive recommendation for the fee waivers totaling \$193,600. The BOS did not discuss the waiver of the water connection fees at that time as such matters are not within their jurisdiction. They did however vote to approve the waiver of 22 building permit and sewer connection fees for Phase 2. This amounts to \$83,600 in fee waivers. See Pages 224-225 of the Packet.

On 1/5/2017, Staff received a Memo from Bob Gardner on behalf of the Nantucket Water Commission, found on Pages 226-227 of the Packet, requesting that the ZBA deny the waiver of the water connection fees. Staff has provided some information to explain what an Enterprise Fund is to assist Board members in better understanding how the Wannacomet Water Company functions. These materials are on Pages 229 -246 of the Packet.

Applicant submitted supplemental materials relative to Condition F(7), found on Pages 247 – 251 of the Packet. These include a letter from Town Engineer Ed Pesce and plans reviewed and approved by Mr. Pesce regarding the logistics of construction and infrastructure installation during Phase 2.

Finally, applicant also submitted a clarifying summary of requested revisions and an updated revised Comp. Permit with the new Condition F(35) regarding Fee Waivers in modified form. These are found on Pages 253 – 281 of the Packet.

The most recent iteration of this proposed Condition F(35) reads as follows:

Regarding requested fee waivers for Phase 2, the Board of Appeals hereby:

Affirms the vote of the Nantucket Board of Selectmen on December \_\_\_\_\_, 2016, granting waivers of the Sewer Connection Fees (\$44,000.00 -- 22 homes to be constructed by the Applicant x \$2,000.00/Lot) and Building Permit Fees (\$39,600.00); and

Staff Report as of 1/10/17

Grants a partial \$72,600.00 waiver from the water connection fees (\$110,000.00 -- 22 homes to be constructed by the Applicant x \$5,000.00/Lot minus \$37,400.00 hard costs for water infrastructure installation that will be paid by the Applicant).

The key difference between the prior iteration centers on the decrease in what is being asked in terms of waiver of water connection fees.

Staff contacted Mr. Gardner who, given this information, reiterated that the Board of Water Commissioners feels strongly that the water fees should not be waived for the reasons set out in his memo, although it addresses the original request for a full waiver. At the direction of his Board, he will be attending the meeting to further elaborate and comment on the restructured (decreased) waiver amounts.

- Discussion about policy regarding re-notification to abutters when an application has been continued for a protracted period.

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V. ADJOURNMENT.

Venividivici Property Dvpt., Inc.

55 Pochick Ave.

FILE NO. 04-17

**Complete Certificate  
of Non-Contiguous  
Ownership**

EDWIN A. LEMBERG  
Lots 5 - 11, inclusive, 50 The Boulevard, Nantucket, MA

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss


CERTIFICATE OF NON-CONTIGUOUS OWNERSHIP

I, the undersigned Richard J. Glidden of Glidden & Glidden, P.C., 37 Centre Street, Nantucket, MA 02554, being an attorney duly licensed in the Commonwealth of Massachusetts, hereby certify to the Nantucket Building Department for the purposes of the issuance of a building permit, that I have examined the public records maintained at the Nantucket Registry of Deeds affecting the premises at Pochick Avenue and The Boulevarde, Surfside, being shown as Lots 5 - 11 inclusive, on Plan recorded in Plan Book 2, Page 61 at the Nantucket Registry of Deeds (Tax Map 79, Parcel 076), currently owned by Edwin A. Lemberg, Deed recorded at Book 390, Page 171, hereinafter referred to as the Premises, and I have examined the record title to the properties abutting the Premises, to wit:

<u>Northerly abuttor:</u>	Pochick Avenue;
<u>Northeasterly abuttor:</u>	Lots 1-3 in Block 166 on said plan;
<u>Easterly abuttor:</u>	Lot 4 in Block 164 on said plan;
<u>Southerly abuttor:</u>	The Boulevarde;
<u>Westerly abuttor:</u>	Clifford Street.

I certify that none of the aforesaid lots abutting the premises have been held in common ownership with that of the premises since July, 1972 at or about which time the Zoning By-Law was adopted in Nantucket.

Signed under the pains and penalties of perjury this 2nd day of October, 1992.

  
Richard J. Glidden, Attorney  
Glidden & Glidden, P.C.  
37 Centre Street  
Nantucket, MA 02554  
508-228-0771