



ZONING BOARD OF APPEALS

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

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

~~ MINUTES ~~

Thursday, July 14, 2016

Public Safety Facility, 4 Fairgrounds Road, Community Room –12:00 p.m.

Called to order at 12:05 p.m.

Staff in attendance: Leslie Snell, Deputy Director PLUS; Terry Norton, Town Minutes Taker
Attending Members: Toole, Botticelli, McCarthy, O'Mara, Koseatac, Poor, Thayer, Mondani
Absent: None
Late Arrivals: Toole, 12:13 p.m.; Koseatac, 12:33 p.m.; Poor, 12:37 p.m.
Early Departures: Botticelli, 2:26 p.m.
Town Counsel: Ilana Quirk, Kopelman & Paige, P.C.
ZBA Consultants: Ed Marchant, 40B (call in)

Agenda adopted by unanimous consent

I. APPROVAL OF MINUTES

1. June 9, 2016: Held

II. OLD BUSINESS

1. 66-00 Abrem Quarry(40B) Kuszpa
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.

Voting Botticelli, McCarthy, O'Mara, Thayer, Mondani
Alternates None
Recused None
Documentation File with associated plans, photos and required documentation
Representing None
Public None
Discussion None
Motion **Motion to Approve.** (made by: McCarthy) (seconded by: O'Mara)

2. 04-16 Donald J. Mackinnon, Trustee of Nantucket 106 Surfside Realty Trust – *a/k/a* SURFSIDE COMMONS 40B
106 Surfside Road Mackinnon / Schwartz

The Applicant is seeking a Comprehensive Permit in accordance with M.G.L. Chapter 40B, as approved by Massachusetts Housing Partnership, in order to allow a multi-family project consisting of 56 rental apartments with fourteen (14) to be designated as affordable units. The apartments will be arranged in two 2½ story buildings with thirteen units each and two 3½ story buildings with fifteen (15) units each. There will be a total of two 1-bedroom units, forty two 2-bedroom units, and twelve 3-bedroom units. The project will also include a clubhouse and pool. If approved, the property will be permanently deed-restricted for the purpose of providing affordable year-round housing. The file with a copy of the complete and updated list of requested waivers is available at the Zoning Board of Appeals office at 2 Fairgrounds Road between the hours of 7:30 A.M. and 4:30 P.M., Monday through Friday or via link to posting of all document related to this project found on Town of Nantucket website below: <http://www.nantucket-ma.gov/708/Atlantic-Development--106-Surfside-Road> The Locus, situated at 106 Surfside Road, is shown on Assessor's Map 67 as Parcel 80. Locus is also shown as Block 22 on Plan File 3-D and as Parcels 7-11 (inclusive) on Plan No. 2014-52. Evidence of owner's title is recorded in Book 1410, Page 205 and Book 1488 Page 213, both on file at the Nantucket County Registry of Deeds. The site is zoned Limited Use General 2 (LUG-2) and Limited Use General 3 (LUG-3).

Voting Toole, Botticelli, McCarthy, O'Mara, Koseatac
Alternates Poor, Mondani
Recused Thayer
Documentation File with associated plans, photos and required documentation

Representing

Donald J. MacKinnon, Atlantic Development
Steve Schwartz, Goulston and Storrs, counsel
Matt Mrva, Bohler Engineering
Margaret Murphy, Atlantic Development
Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP

Public

Patrick Taaffe, 21 Okorwaw Avenue
Cormac Collier, Executive Director Nantucket Land Council (NLC)
Joseph Guay, Brian & Linda Davis at 108 Surfside Road and Mary Beth Ferro, 104 Surfside Road
Mary Beth Ferro, 104 Surfside Road
Judy Zurheide, 1 Folger Avenue
Jack Benjamin, Gladlands Road
Jessica Davis, 108 Surfside Road
Linda Davis at 108 Surfside Road
Jane Valero, 9 Gladlands Road

Discussion (1:02)

MacKinnon – Reviewed the discussions from a work group meeting held on June 29, 2016 resulting in three plans: two for 32-duplex sale units and one concept for 52-rental units. Reviewed the distances to abutting homes from the rental-model plan. Reviewed the pros-and-con comments from the Town Consultant Cliff Boehmer on each of the three concept plans. He feels confident to move forward with the 52-rental units plan.

Botticelli – One thing missing; it was discussed to have profiles in terms of scale. The mansard roof form of the old Surfside Hotel is not appropriate in this area.

Mackinnon – Noted that comment. Stated that the apartment blocks would be three stories and the townhouses two stories. There was talk about incorporating third floor apartments in the roof with use of dormers.

Toole – We can provide guidance as to which site plan the board is most comfortable.

Botticelli – The for-sale plan is less dense. To make the rental work, the applicant stated it would have to have 52 units.

Marchant – The neighborhood is welcome to comment on a site plan and massing plan; whether it is rental or owner is up to the applicant.

Taaffe – The neighbors haven't seen any approvable plans; this project is 100% not appropriate for this area.

Toole – Asked if all neighbors agree with Mr. Taaffe's assessment so that it doesn't have to be repated.

All the neighbors agree with Mr. Taaffe.

O'Mara – Asked if it is incumbent upon the board to ensure this is a positive economic event.

Marchant – No; that rests with the subsidizing agency. If the applicant presents a 32-unit plan, the applicant presumes it will be financially feasible.

Toole – The board has to look at what was presented and move forward. It boils down to the massing and which concept is preferred by this board. His opinion is the maximum height should be no more than 2.5 stories.

Marchant – The ZBA has to make its determination based upon what might happen subsequent to its decision. If the applicant is unhappy with the decision, they will appeal. Unless there is a health or safety issue, they are likely to win the appeal. The board needs to choose the least unattractive.

Botticelli – Concept B is the best scale for the area and has green space around the perimeter. Concept A puts single-family dwellings (SFD) along the road and that isn't appropriate.

Poor – Suggested minimizing the bituminous area with the use of gravel or shell.

O'Mara – All the schemes are an improvement. Agrees with Ms Botticelli that Concept B is the best.

Koseatac – Agrees with Mr. Poor about shell surface but not sure how that works with run off. Agrees that Concept B is the most successful.

Mondani – Asked about the for-sale model.

MacKinnon – It would be 25%; that results in eight affordable units out of 32.

Toole – Agrees these are better. Likes Concept B in terms of green space. Would like to see some more group space and lessening of nitrogen loading in the neighborhood and reducing the amount of paving and number of units. The plan of 16 units per acre is denser than any 40B on the island.

MacKinnon – Noted that the density of Concept B is similar to Nobadeer Meeting House. Under the current application, the project can't be modified to for sale; they have to proceed with the rental model. They would have to submit a new PEL application to go with the for sale option.

Toole – At the workgroup meeting, he asked the applicant if they would be willing to move forward with for sale concept and was told yes.

Schwartz – They aren't proposing 32-rental units; they are proposing the 52-rental model. They aren't interested in pursuing the for-sale model.

Marchant – Whether or not they to go from rental to for sale is up to the subsidizing agency.

Schwartz – Their subsidizing agency is Massachusetts Housing Partnership (MHP).

Marchant – If their subsidizing agency were Mass Housing, they provides project eligibility letters for both. Given his experience, if there is a change in tenure evolving from the hearing discussion, the subsidizing agency will be sensitive to that. He believes that applicant might have to go to Mass Housing, which will provide an expedited review and not be up

against the 10% or safe-harbor problem. He agrees with the applicant that it would be most productive if the board could give an indication as to which alternative is preferred.

Toole – The board prefers Concept B in regards to massing and siting.

Marchant – It seems to him that the driving issue is the site plan and the massing in a 40B concept as it relates to the neighborhood. The for-sale concept is feasible or it wouldn't have been presented. The

Quirk – The question now is how to proceed next; that is up to the applicant. They are saying they would have to pursue a new Project Eligibility Letter (PEL). Recommends continuing for one month to allow the applicant to consider the issues raised and whether or not to go forth seeking a new PEL.

MacKinnon – Going to Mass Housing puts all the burden and risk on them, the applicant. The other route is to pursue a Local Initiative Project (LIP), which requires a letter of support from the Board of Selectmen (BOS) and then going to the Department of Housing and Community Development (DHCD). They would be interested in looking at that.

Quirk – Explained the LIP has to be endorsed by the chief executive officer, in this case the BOS, so involves an application to the BOS. She always advises the BOS in such cases to look at the application very carefully in the event that some kind of agreement is reached that requires their endorsement and that there be an LIP Memorandum of Agreement (MOA) before it goes off to the PEL process. That way when it comes back there is a binding conceptual agreement between the parties.

Schwartz – There is one step that was left out; they have to go to the State after the BOS endorses the project. DHCD issues the PEL. It becomes a 3-way agreement between the State, the Town, and the applicant.

MacKinnon – Would like to have a meeting with the selectmen to see if it is something they would consider before going forward with a new PEL application.

Schwartz – If they go through all of that, the ZBA will agree with the MOA and not try to reinvent the wheel.

Quirk – If the BOS is willing to enter into a LIP there would be a contractual agreement between the applicant and the BOS.

Schwartz – They did not pursue a LIP from the BOS. They are willing to explore whether or not there is a willingness on the town and BOS to explore that. Will grant an extension to the end of November.

Marchant – If the applicant thinks there is a better alternative, that is their decision.

Snell – It is reasonable to meet with the BOS before the September meeting. Current action deadline is October 30.

Poor – The applicant should look at all the waiver requests in place and ascertain which could be eliminated under Concept B; for example the waiver of the height restriction.

Toole – Asked the applicant to grant a one-month extension to the end of November in order for this to be continued to the September meeting.

Discussion about what might be discussed and occur when the applicant meets with the BOS.

Collier – At a previous hearing, the applicant had indicated they would ask for waivers for the septic system as it relates to Board of Health (BOH) regulations; if that would mean only the Department of Environmental Protection (DEP) would review the septic system, he asked that the ZBA not waive those regulations and at a minimum have a consultant review those plans and that the ZBA uphold the BOH regulations. Also asked the board to have the applicant submit plans that the public and NLC can review.

Quirk – If septic will proceed, focus on whatever waivers are necessary and requested and have a consultant review the plans for any waivers necessary to include environmental laws. The septic permit from DEP isn't something the board has jurisdiction over but there would be local environmental bylaws and regulations for which waivers would be necessary.

Mrva – The primary focus of the regulation is the amount of nitrogen loading that occurs; the goal with the system discussed at the May meeting is that nitrogen would meet the regulations.

Guay – Confirmed that the meeting with the BOS would be a public meeting. Asked that the applicant provide and circulate information on Concept B prior to the BOS meeting. The Historic District Commission (HDC) submitted a report on the original plan; requested the HDC be allowed to review these changes and noted their input would be helpful for the BOS. If this LIP arrangement is agreed upon, asked if that is appealable and takes it out of the hands of the public.

Quirk – A PEL is not appealable at the point of issuance; once the permit process is done, that would be the appropriate time. Explained the LIP process before the BOS. The MOA would be very flushed out and is a public document.

Marchant – Explained why the LIP process is considered a “friendly 40B process.” The critical issue is that leverage remains with the Town.

Botticelli – Noted that she would like to see the information that would be presented by the applicant at the BOS meeting.

Quirk – Recommended the ZBA post a meeting for the BOS meeting in the event a quorum of members attends.

Motion to accept the extension to November 30. (made by: Botticelli) (seconded by: O'Mara)

Carried unanimously

Motion Continued to September 8 meeting at 1 p.m. (made by: McCarthy) (seconded by: Koseatac)

Carried unanimously

Motion
Vote
Motion
Vote

3. 16-16 Todd W. Winship & Elizabeth W. Winship and Bess W. Clarke, Tr., Sixteen Monohansett Road Trust
16 Monohansett Road Brescher
- REQUESTED WITHDRAWAL WITHOUT PREJUDICE
- Voting Botticelli, McCarthy, O'Mara, Thayer, Mondani
 Alternates None
 Recused None
 Documentation File with associated plans, photos and required documentation
 Representing None
 Public None
 Discussion (12:09) None
 Motion **Motion to Approve the withdrawal without prejudice.** (made by: O'Mara) (seconded by: McCarthy)
 Vote Carried unanimously
4. 20-16 Gerald T. Vento & Margaret Vento, Tr. of Ninety-One Low Beach Road Nominee Trust
91 Low Beach Road Cohen
- CONTINUED TO AUGUST 11, 2016**

III. NEW BUSINESS

1. 15-16 Madaket Wheelhouse, LLC 13 Massachusetts Avenue Cohen
- 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).
- Voting Toole, Botticelli, McCarthy, Thayer, Mondani
 Alternates None
 Recused O'Mara
 Documentation File with associated plans, photos and required documentation
 Representing Steven Cohen, Cohen & Cohen Law PC
 Public None
 Discussion (12:24) **Cohen** – This is a new application to re-notify the neighbors. Additions to the front and east don't need relief. Front west side is within the setback but not more non-conforming than existing. The garage is now being attached to house and the cottage will stand-alone and be one story. Submitted HDC approved plans at the table.
Toole – Confirmed that the work will not be more conforming than the existing.
Mondani – One neighbor had an issue with the outdoor shower, but it's been moved.
 No concerns.
- Motion **Motion to Grant the permit with the condition the garage remains a garage and the cottage is constructed in compliance with the HDC approved plans.** (made by: Botticelli) (seconded by: McCarthy)
- Vote Carried unanimously
2. 22-16 John N. Jordin & Julie M. Jordin 28 Lovers Lane Hanley
- 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).
- Voting Toole, McCarthy, O'Mara, Koseatac, Thayer
 Alternates Poor, Mondani
 Recused Botticelli
 Documentation File with associated plans, photos and required documentation
 Representing Marianne Hanley, Reade, Gullicksen, Hanley, & Gifford LLP
 Public None
 Discussion **Hanley** – Submitted two letters of support from neighbors at the table. Explained how the situation occurred. Her client is willing to accept a condition that nothing more could be built within the side-yard setbacks. Under the bylaw, there is an argument that due to the electricity the Jacuzzi is a structure; would like either a ruling it doesn't meet the definition of a structure or grant the relief.
O'Mara – Asked if there was a letter from the Remicks at 30 Lovers Lane.
Hanley – No.

Toole – He doesn't think the Jacuzzi is a structure and is not willing to rule on it.

Snell – The bylaw defines a structure as having a fixed location on the ground

Discussion about whether or not the Jacuzzi is a structure.

McCarthy – She is willing to put in the decision that this Jacuzzi is not a structure because it's moveable.

Snell – Noted that it would be important to say it is not a structure due to its size.

Koseatac – Suggested including a picture of the Jacuzzi to limit it to this case.

Motion

Motion to Grant the relief on the garage as requested and the board determines that the Jacuzzi is not a structure due to the structural components of the 350-gallon Jacuzzi and that it is moveable. made by: McCarthy) (seconded by: Koseatac)

Vote

Carried unanimously

3. 23-16

Mark Bono & Elizabeth Gilbert Bono, as Owner, and EK Associates, LLC, as Applicant

15 Black Fish Lane

Hanley

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).

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

Alternates Poor, Thayer

Recused None

Documentation File with associated plans, photos and required documentation

Representing Marianne Hanley, Reade, Gullicksen, Hanley, & Gifford LLP

Alan Grady, Bracken Engineering, Inc.

Public None

Discussion (3:28)

Hanley – Explained how the situation occurred. She has had a surveyor double check the distance and the garage deck encroaches into the setback .5 feet.

Grady – Original as-built site plan showed the garage at 10.1 feet from the setback; the survey at time of sale found it to be 9.5 feet from the setback.

Koseatac – Wants to ensure this decision doesn't set precedent.

Motion

Motion to Grant the relief as requested only for this situation. (made by: Koseatac) (seconded by: McCarthy)

Vote

Carried unanimously

4. 24-16

6 Lily Street LLC & Sconset Partners LLC

6 and 8 Lily Street

Dale

CONTINUED TO AUGUST 11, 2016.

5. 25-16

George Gray, LLC

55 Union Street

Alger

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).

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

Alternates Thayer, Mondani

Recused None

Documentation File with associated plans, photos and required documentation

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

Public None

Discussion (3:36)

Alger – The decision should read the encroachment is 2.4 inches. Explained how the encroachment into the 5-foot setback occurred.

Koseatac – This is a really unique situation.

Motion

Motion to Grant as requested and changing the 2.4 feet to 2.3 inches. (made by: Koseatac) (seconded by: McCarthy)

Vote

Carried unanimously

6. 26-16

Paul Benk and Lauri LeJeune Benk

8 North Gully Road

Brescher

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).

Voting

Botticelli, McCarthy, O'Mara, Thayer, Mondani

- Alternates None
 Recused None
 Documentation File with associated plans, photos and required documentation
 Representing None
 Public None
 Discussion **Snell** – Received a request from Attorney John Brescher, Glidden & Glidden requesting this be withdrawn without prejudice.
 Motion **Motion to Approve the withdrawal without prejudice.** (made by: McCarthy) (seconded by: Thayer)
 Vote Carried unanimously
7. 27-16 Kite Hill, LLC 5 Kite Hill Lane Reade
 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).
 Voting Toole, Botticelli, McCarthy, Koseatac, Mondani
 Alternates Thayer
 Recused O’Mara, Poor
 Documentation File with associated plans, photos and required documentation
 Representing **Arthur Reade**, Reade, Gullicksen, Hanley, & Gifford LLP
 Public None
 Discussion (12:35) **Reade** – Explained what led to the situation and the agreement among the three abutting property owners. This change has no affect on anyone except these neighbors involved in the agreement. Explained the new non-conformity resulting from this change.
Toole – Asked if this would allow for Lot C to be subdivided.
Reade – This lot cannot be subdivided based on the lack of frontage along a legal street.
 Discussion about who has the right to park in the three spaces.
Toole – It should be part of the decision that Dunphy Maureen Trust *et al* has no rights to park there. He would like evidence that they are in agreement with this.
Snell – It isn’t the role of the ZBA to determine who has and doesn’t have rights. Recommends making a decision today.
Reade – The Dunphy Trust is not part of this arrangement.
Quirk – ZBA does not have the ability to adjudicate a private dispute. If there is an issue with respect to control of the property, that relief would be exercised only by those who have the right to exercise it. Recommend that when relief is granted, a copy of the decision be sent to everyone on the abutters list and to anyone who might have an issue.
McCarthy – If they have an easement allowing them to park in that area, the ZBA decision would not take away that right.
Toole – His concern is removing that lot out of the communal Sunset Hill Drive and attaching it to Dillard’s property. There are some rights for the property in the back (6 Kite Hill Lane); it would be nice to have that document in the file.
Reade – This is not communal property; it is part of Lot C. The document provides for that back property to pass and reposs.
McCarthy – Suggested making the decision and then have that document included in the file.
Snell – Noted that once the hearing is closed, the record is closed and cannot be added to.
Quirk – Noted that the hearing could be continued for that document to be included in the record. A plan can be amended in a decision but not adding a whole, new document.
 Motion **Motion to Grant the relief as requested.** (made by: Botticelli) (seconded by: McCarthy)
 Vote Carried 4-1//Toole opposed
8. 28-16 Eric J. Rosenberg & Michele Kolb 7 Gardner Street Williams
 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).
 Voting Toole, McCarthy, O’Mara, Koseatac, Poor
 Alternates Thayer, Mondani
 Recused None
 Documentation File with associated plans, photos and required documentation
 Representing Steven Cohen, Cohen & Cohen Law PC

- Public Rhoda Weinman, for the abutters.
Ron Winters, 1 Lowell Street
Jordan Goodman, 11 Gardner Street
- Discussion (2:30) **Cohen** – This is a 4181L subdivision, which allows subdividing irrespective of zoning. Proposal is to replace a corrugated garage with a SFD which will be less than 50% ground cover as allowed by zoning. The structure will be three feet from property line. There are letters of opposition in the file, but this is a commonly granted permit. A residence is a conforming use for this lot; the garage was a non-conforming use.
Poor – Wants to know if a curb cut will be added and where.
Cohen – No, the curb cut and driveway exist.
Toole – The proposed site plan doesn't seem to have the same lot line as the existing.
Cohen – The new plan was adopted Monday at the Planning Board meeting; the lot line changes only slightly. The location of the house and conformity don't change. If air conditioning is required, he will come back for relief or put it on the conforming side.
O'Mara – This will make it more non- conforming; confirmed that the owner created the non-conformity in that they created the 4181L.
Weinman – Doesn't believe the relief requested is appropriate; should be asking for a variance. By zoning bylaws, the change should not be substantially more detrimental for the neighborhood; a dwelling on an undersized lot is more detrimental than a garage. The board must consider the issues raised in the letters and the bylaws. Traffic on the street won't be able to pass with construction going on and the on-street parking will be lost. This lot is 2700 square foot with a multi-story dwelling. The relief from the five-foot setback should be met. The owners created this hardship; they could have divided it differently. Asked the board to deny the relief.
Winters – Once the garage is demolished, the lot is vacant. Construction of a new house on an empty lot should be required to conform and not be granted relief.
Goodman – Asked where parking for this lot will be.
Cohen – The lot in question has two parking spaces that are conforming, one for each house. Contends comments about construction were inappropriate. Rebutted comments about having created a hardship. The idea that this should be considered a vacant lot is inaccurate. The current code allows 50% ground cover. The only question is whether or not a modest house causes a substantially negative impact.
Koseatac – Asked what is the problem with conforming to the five-foot setback.
Cohen – Explained the HDC's reasons for their approval.
O'Mara – Regarding the one-year period, asked if there is a provision in the bylaw for that period to extend.
Snell – No.
Poor – This "modest, little" structure has four bedrooms. There will be increased intensity of use.
O'Mara – The only way to control that is not to grant the setback relief.
Toole – This is a residential use in a residential neighborhood. It seems the lot lines could have been drawn better and/or the house designed to be conforming.
Weinman – This board shouldn't make a decision based upon the HDC approval. In her opinion it is detrimental and asked for enforcement of the five-foot setback.
O'Mara – If this is granted, it should be conditioned with no exterior construction in the summer. Also, he could vote for it if it is conditioned that the structural encroachment within the setback does not exceed one story.
Toole – Polled the board.
Cohen – Asked this be continued.
- Motion **Motion to Continue to August 11 at 1 p.m.** (made by: O'Mara) (seconded by: Poor)
- Vote Carried unanimously
- 9. 29-16 Hans Dalgaard 65 Surfside Road Williams
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).
- Voting Toole, McCarthy, O'Mara, Koseatac, Thayer
- Alternates Mondani
- Recused Poor
- Documentation File with associated plans, photos and required documentation
- Representing Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP
Hans Dalgaard, owner
- Public None
- Discussion (3:46) **Reade** – Explained the reason for the encroachment and why the duplex can't be relocated on the lot. Stated this project received a favorable recommendation from the Planning Board urging ZBA approval.

Snell – Reviewed the history of zoning in the area and how it relates to this property leading up to this situation.

Reade – It was not realized while going through the application process; moving it would cause issues. This is a tight site. If this had been built when it was initially approved, there would have been no zoning issues. It was delayed due to the downturn in the economy. This is a *de minimus* intrusion situation; only a small portion protrudes. Noted his client can cut back the porch to maintain the 6.7.

Toole – It seems the building could be redesigned with slight modifications to conform.

Dalgaard – He can't move the building away from the rear lot line due to the need for space for trucks to maneuver. The neighbors have not expressed concern with this.

McCarthy – Doesn't have a problem granting the relief.

Koseatac – Agrees with Ms McCarthy.

O'Mara – Would like to support this but would like a surveyor to pin the corners once the footings are in.

Motion **Motion to Grant the relief for 6 feet 7.38 inches based upon Exhibit A.** (made by: McCarthy) (seconded by: Koseatac)

Vote Carried 4-1//Toole opposed

10. OTHER BUSINESS

1. 34-15 NHA Properties, Inc., *d/b/a* Housing Nantucket, School View Cottages 7 Surfside Road Kuszpa

APPROVED FOR WITHDRAWAL WITHOUT PREJUDICE

Vote to release remaining funds in Escrow account subsequent to payment of all outstanding invoices.

Voting Botticelli, McCarthy, O'Mara, Thayer, Mondani

Alternates None

Recused None

Documentation File with associated plans, photos and required documentation

Representing None

Public None

Discussion **Snell** – Explained that there is money in escrow that can be returned to the applicant with the board's approval.

Motion **Approved the return of the money in escrow by unanimous consent.**

Vote N/A

2. Election of officers: Held

11. ADJOURNMENT

Motion to Adjourn: 4:08 p.m.

Submitted by:
Terry L. Norton