



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, October 13, 2016

Public Safety Facility, 4 Fairgrounds Road, Community Room – 1:00 p.m.

Called to order at 1:05 p.m.

Staff in attendance: Eleanor Antonietti, Zoning Administrator; T. Norton, Town Minutes Taker
Attending Members: Toole, McCarthy, O'Mara, Koseatac, Poor, Thayer, Mondani
Absent: Botticelli
Late Arrivals: Koseatac, 1:07 p.m.
Early Departures: None

Agenda adopted by unanimous consent

I. APPROVAL OF MINUTES

1. September 20, 2016: **Motion to Approve.** (made by: McCarthy) (seconded by: O'Mara) Carried unanimously

II. OLD BUSINESS

- | | | |
|-------------------|---|--------|
| 1. 51-03 | Rugged Scott, LLC Release of Lots 2 & 3 from Covenant | Hanley |
| Voting | Toole, McCarthy, O'Mara, Poor, Thayer | |
| Alternates | None | |
| Recused | None | |
| Documentation | File with associated plans, photos and required documentation | |
| Representing | Marianne Hanley , Reade, Gullicksen, Hanley, & Gifford LLP – There are nine buildable lots remaining. They are still on track with the affordable housing requirements. | |
| Public | None | |
| Discussion | Antonietti – She is monitoring this closely. | |
| Motion | Motion to Grant the relief as requested. (made by: McCarthy) (seconded by: O'Mara) | |
| Vote | Carried unanimously | |
| 2. 20-16 | Gerald T. Vento & Margaret Vento, Tr. of Ninety-One Low Beach Road Nominee Trust
91 Low Beach Road | Cohen |
| Voting | Toole, Koseatac, Poor, Thayer, Mondani | |
| Alternates | None | |
| Recused | O'Mara, McCarthy | |
| Documentation | File with associated plans, photos and required documentation | |
| Representing | Steven Cohen , Cohen & Cohen Law PC – This is a 3-acre, heavily-wooded lot abutting conservation land; the side where the tennis court is has a tennis court on the abutting property. Explains how the tennis court came to be an encroachment into the rear- and side-yard setback. In his opinion, this qualifies for a special permit and asks it be granted. The court itself has a 12-foot perimeter between the lines and the fence for safety. Moving the court and fence represents a substantial expense. Contended that there is minimal impact on the neighborhood from the encroachment. | |
| Public | None | |
| Discussion (1:09) | Toole – Read Zoning Bylaw Section 139-16.C(2); asked how it meets that criteria.
Cohen – The intrusion came about when the contractor worked off a survey that was done for wetland work; he feels it was appropriate for the contractor to use that survey.
Toole – He feels that the intent of the bylaw is for when the surveyor makes a mistake, not to compensate for the contractor doing what he wants.
Cohen – He feels the bylaw can be applied more widely than intended. What he's asking is not outside the normal application of the bylaw.
Poor – This meets the definition of a structure; he understands there was no building permit pulled for this.
Cohen – The building permit has since been pulled and verified and has received Historic District Commission (HDC) approval. The fence for a game court and paving don't count as a structure when taken separately but together they qualify as a structure. | |

Koseatac – He is concerned there might be other such situations existing with work done by this contractor. He has a problem with Fair Play doing what he wants then asking for forgiveness.

Toole – They did not attempt to seek any permits and placed it using a tape measure instead of a licensed surveyor without providing for the shape of the lot. The fence could be moved and there would still be room to play tennis.

Thayer – Not just the fence is in the setback but the court itself is in the setback.

Toole – The bylaw might need to better define a playing court; the clay court itself is 25 feet from the property line. From the drawing, he can't determine the size of the court with perimeter. A licensed surveyor could have figured this out; but that was not sought.

Koseatac – He is willing to grant this relief but if he sees Fair Play show up with another one of these, he will vote it down.

Motion **Motion to Grant the relief as requested.** (made by: Koseatac) (seconded by: Thayer)
 Vote Carried 4-1//Poor opposed

III. NEW BUSINESS

1. 24-16 6 Lily Street LLC & Sconset Partners LLC 6 and 8 Lily Street Dale

CONTINUED TO NOVEMBER 10, 2016

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).

Voting Toole, Koseatac, Poor, Thayer, Mondani
 Alternates None
 Recused None
 Documentation File with associated plans, photos and required documentation
 Representing None
 Public None
 Discussion (1:29) None
 Motion **Motion to Continue to November 10, 2016.** (made by: Koseatac) (seconded by: Poor)
 Vote Carried unanimously

2. 32-16 Alan A. Shuch, Trustee of the Ann F. Shuch Qualified Personal Residence Trust 45 Quidnet Road Alger
 Applicant is seeking Special Permit relief under By-law Section 139-33.A(1)(a) to extend, alter, or change a pre-existing, non-conforming ancillary structure used as a studio and beach changing area by raising it up above the flood plain so that it no longer floods and adding stairs necessary for access. To the extent necessary, Applicant also seeks a modification of the Board's decision in File No. 007-96 to allow for such work. The Locus is situated at 45 Quidnet Road, is shown on Assessor's Map 21 as Parcel 21, and is Lot 23 on Land Court Plan 8853-L. Owner's title is evidenced by Certificate of Title No. 21927 at the Nantucket Registry District. The site is zoned Residential-20 (R20).

Voting Toole, McCarthy, O'Mara, Koseatac, Thayer
 Alternates Poor, Mondani
 Recused None
 Documentation File with associated plans, photos and required documentation
 Representing **Sarah Alger**, Sarah F. Alger P.C. – In 1996, a permit allowed reconstruction of a cabana/changing shack on the beach. They have HDC approval and this is pending with Conservation Commission (ConCom). Winter water is flooding up to the floor joists; considering the flood zone requirements, this should go to elevation 9; if it is raised the proposed 3 feet, it will be at elevation 10. This will keep the top below the coastal bank. The existing foundation is a combination of blocks and concrete piers and will be increased in height with all work by hand. At the table, submitted into the file an abutter's map. The abutters most seriously impacted have sent letters in favor of the application. At the table, submitted into the file photos of the cottage that was removed and other structures on the beach of the pond.
Alan Shuch, owner – There was another shed/cottage that was removed. Contends this structure is not and won't be visible above the bank. This studio predates many homes along Sesachacha Pond.
 Bob Emack, surveyor
 White Bourne, caretaker
 Public **Kevin Dale**, Vaughan, Dale, Hunter and Beaudette, P.C., for William & Laura Paulsen – This is not just raising the cottage, it is looking at the relationship between what's proposed and the pond. The cottage on the beach is anomalous. His client is concerned what raising this will do to the neighborhood when it becomes prominent and how it will affect the pond. The Board policy has been that before coming in, the applicant should have HDC approval and, if required, a ConCom Order of Conditions. Feels the applicant should mitigate the impact; reviewed possible mitigation efforts. Asked the Board to wait for the ConCom decision.
 Discussion (1:30) **O'Mara** – He thought there was a condition in the original reconstruction permit to remove the bathroom.

Alger – Not the bathroom but the kitchen. The only other change is a set of stairs to the west to allow access once raised.

Poor – He would like to see what ConCom has to say about this.

Thayer – The septic pump chamber below the bathroom is at the beach level leaving it susceptible to flooding.

Toole – The porch is existing; the stairs are not. Asked the members their thoughts about waiting for a ConCom decision.

Alger – She believes this is not a substantial detriment to the neighborhood and is a reasonable request.

Toole – Asked how the final elevation was arrived at.

Emack – This structure is currently at elevation 7 and the building code requires two more feet but the flood zone is at elevation 10.

Bourne – In regards to the rise in water level, he has noted along Polpis Road stones were added because the road is being undermined. There has been a dramatic change in the water level.

Thayer – He concurs that it is getting wetter.

O'Mara – He's willing to support this but wants to see what ConCom has to say.

Dale – Noted that his client doesn't oppose this project; this is a delicate project in a very fragile, wetland resource area and should be done with the right conditions.

Poor – He is certain ConCom will impose strict construction protocols.

Koseatac – He proposes continuing to November to see what ConCom says. Suggested the applicant explore options for the pump.

Alger – Asked if the board wants any additional information for the November hearing.

O'Mara – He has enough information but it is to the applicant's benefit to wait for the ConCom ruling.

Poor – He would like to see the Certificate of Appropriateness (COA) from HDC on this project.

Thayer – He would support this but the septic pump should be tested for water tightness on a yearly basis.

Alger – Mr. Dale provided her a copy of the COA; submitted that into the record at the table.

Motion to Continue to November 10, 2016. (made by: Koseatac) (seconded by: O'Mara)

Motion

Vote Carried unanimously

3. 35-16 Harvey C. Jones, Jr. Tr. Eight Old North Wharf Nominee Trust 8 Old North Wharf Gifford

Applicant is seeking Special Permit relief pursuant to Zoning By-law Section 139-33.A(2) to allow an increase in the pre-existing nonconforming ground cover ratio upon the pre-existing nonconforming locus. In the alternative and to the extent necessary, applicant requests Variance relief pursuant to Section 139-32 for a waiver of the ground cover ratio provisions in Section 139-16. Applicant is proposing to alter the pre-existing nonconforming dwelling by enclosing an existing porch such that there will be no change to the structure's footprint. The Locus is situated at 8 Old North Wharf, is shown on Assessor's Map 42.3.1 as Parcel 20, as Lot B-1 upon Land Court Plan 10169-B. Evidence of owner's title is registered on Certificate of Title No. 25811 at the Nantucket County District of the Land Court. The site is zoned Residential Commercial (RC).

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

Alternates Poor, Thayer

Recused None

Documentation File with associated plans, photos and required documentation

Representing **Whitney Gifford** – In 2005, relief was granted to lift and repair the underlying supports. This project would place wall behind an exterior lattice wall on the east side; there will be no change over the pier.
Mickey Rowland, Rowland and Associates – Currently the lattice protects a porch.

Public None

Discussion (2:10) **Antonietti** – The Board recently granted relief for an increase to ground cover to enclose a generator under a new section of the bylaw.

Toole – This would no longer meet Section C of the bylaw as living space would go to the lot line.

Rowland – Noted the lattice is very tight with 3/4 inch spaces. At the table submitted into the file photos of the lattice.

O'Mara – The state recently changed the rules; if something has gone 10 years unpermitted, the owner can apply for other permits. The state also extended the life of a special permit.

Rowland – Explained that the lattice will remain so that the exterior façade will not change visually. There is no change to the waterside porch. The increase in ground cover from enclosing the east porch is about 40 square feet.

Gifford – Stated that he checked with ConCom and was told that this does not need relief since no change is being made to the underlying supports.

Toole – In his opinion, when you purchase a property with a certain ground cover, you should abide by that.

Koseatac – Stated he has no issues.

Motion **Motion to Approve as requested based upon the uniqueness of this property.** (made by: Koseatac) (seconded by: McCarthy)

Vote Not Carried 3-2//Toole & Mondani opposed

IV. OTHER BUSINESS

1. None

V. ADJOURNMENT

Motion to Adjourn at 2:32 p.m.

Submitted by:
Terry L. Norton