



# ZONING BOARD OF APPEALS

2 Fairgrounds Road  
Nantucket, Massachusetts 02554  
[www.nantucket-ma.gov](http://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, January 12, 2017**

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

Called to order at 1:08 p.m.

Staff in attendance: Eleanor Antonietti, Zoning Administrator; T. Norton, Town Minutes Taker  
Attending Members: Toole, McCarthy, O'Mara, Koseatac, Poor, Mondani  
Absent: Botticelli, Thayer  
Late Arrivals: O'Mara, 1:47 p.m.  
Early Departures: None

Agenda adopted as amended by unanimous consent

## I. APPROVAL OF MINUTES

1. December 8, 2016: Motion to Approve. (made by: Koseatac) (seconded by: McCarthy) Carried unanimously

## II. OLD BUSINESS

1. 41-16 Linda Mason, Applicant, & Anne G. Davis And Paul A. Gares, Owners 23 Monomoy Road Beaudette  
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).

Voting Toole, McCarthy, Koseatac, Mondani  
Alternates None  
Recused O'Mara, Poor  
Documentation File with associated plans, photos and required documentation  
Representing None  
Public None  
Discussion Not opened.  
Motion **Motion to Continue to January 17, 2017.** (made by: Koseatac) (seconded by: McCarthy)  
Vote Carried unanimously

## III. NEW BUSINESS

1. 24-166 Lily Street LLC & Sconset Partners LLC 6 and 8 Lily Street Dale  
**REQUEST TO WITHDRAW WITHOUT PREJUDICE**

Voting Toole, McCarthy, Koseatac, Poor, Mondani  
Alternates None  
Recused None  
Documentation File with associated plans, photos and required documentation  
Representing None  
Public None  
Discussion None  
Motion **Motion to Accept the withdrawal without prejudice.** (made by: Koseatac) (seconded by: McCarthy)  
Vote Carried unanimously

2. 36-16 Loren H. Kroll and Norma J. Goldman 24 Coffin St. Beaudette  
 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).  
 Voting Toole, McCarthy, Koseatac, Poor, Mondani  
 Alternates None  
 Recused None  
 Documentation File with associated plans, photos and required documentation  
 Representing None  
 Public None  
 Discussion Not opened.  
 Motion **Motion to Continue to February 9, 2017.** (made by: Koseatac) (seconded by: McCarthy)  
 Vote Carried unanimously
3. 40-16 Sankaty Head Golf Club 100 Sankaty Road Dale  
 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).  
 Voting McCarthy (acting chair), Koseatac, Poor, Mondani  
 Alternates None  
 Recused Toole  
 Documentation File with associated plans, photos and required documentation  
 Representing None  
 Public None  
 Discussion Opened to continue to January 17, 2017  
 Motion **Motion to Continue to January 17, 2017.** (made by: Poor) (seconded by: Mondani)  
 Vote Carried unanimously
4. 01-17 Ronald W. Winters and Ellen H. Winters 12 Gardner Street Winters  
 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)).  
 Voting Toole, McCarthy, Koseatac, Poor, Mondani  
 Alternates None  
 Recused None  
 Documentation File with associated plans, photos and required documentation  
 Representing **Ron Winters** – Currently the structure intrudes into setback: by one foot on one side and two foot eight inches on the other. The addition will be conforming in regards to the setbacks. Reviewed photos. The building is being raised eight inches with a ten-inch floor system. The foundation will be a crawl space under the addition.  
 Public None  
 Discussion (1:12) **Toole** – The note says the foundation is being raised sixteen inches and Mr. Winters is now saying eight inches. The site plan doesn't match what the letter says in regards to the garage in the setback. Asked when the shed was put in.  
**Winters** – The foundation is being raised eight inches. Per the Sanborn maps, everything was existing prior to the 1950s.  
**Toole** – The Sanborn map showing the shed there in the 1950s should be included in the packet.  
**Koseatac** – Asked if there would be any excavation.  
**Winters** – It will all be approached from the driveway side.  
**Koseatac** – Wants to impose the exterior work restriction: June 15 to September 15.  
 Motion **Motion to Approve the application as requested with no exterior work to be performed from June 15 to September 15.** (made by: Koseatac) (seconded by: Poor)  
 Vote Carried unanimously

5. 02-17 R. Eric Kennedy and Jacqueline W. Kennedy, as Co-Trustees, Into The Mystic Nominee Trust  
189 Polpis Road Alger

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).

Voting Toole, McCarthy, Koseatac, Poor, Mondani

Alternates None

Recused None

Documentation File with associated plans, photos and required documentation

Representing **Sarah Alger**, Alger P.C. – This is over the permitted groundcover as a result of an erroneous survey from 2003; explained how the error occurred and was perpetuated. The buildings were constructed in compliance with the building permits. She believes the best option is granting the variance.

Public None

Discussion (1:24) **Koseatac** – This is a mistake that was missed, but he doesn't think MGL Chapter 40.A Section 7 is the way to go on this. **Toole** – Would like to have added to the file the original plan showing the dormer to prove it wasn't added later without permit.

Discussion about the hardship incurred if the variance isn't granted.

**Alger** – Asked this be held long enough for her to obtain the plans showing the dormer as part of the original construction.

Motion to Continue to the end of the agenda. (made by: Koseatac) (seconded by: McCarthy) Carried unanimously (3:01) **Alger** – Reviewed the original plans from 1997 that show the dormer.

Motion **Motion to Approve the variance.** (made by: Koseatac) (seconded by: McCarthy)

Vote Carried 4-1//Poor opposed

6. 03-17 Lemberg, Marie E. 53 Pochick Avenue Wilson

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 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).

7. 04-17 Venividivici Property Development, Inc. 55 Pochick Avenue Wilson

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).

Voting Toole, McCarthy, Koseatac, Poor, Mondani

Alternates None

Recused None

Documentation File with associated plans, photos and required documentation

Representing **Michael Wilson**, Esq. – These parcels abut one another and have been rendered as separate and buildable. Reviewed the histories of both lots. He is asking, due to the nature of the lot size of the one parcel and uncommon ownership of the two, that the board find the variance is appropriate. The lots were built out between 1992 and 1995.

Public None

Discussion (1:40) **Antonietti** – Mentioned a letter of endorsement of ANR Subdivision from the Planning Board; they support the concept that no relief is necessary.

Consensus has no concerns.

Motion **Motion for a Finding that no relief is necessary.** (made by: Koseatac) (seconded by: McCarthy)

Vote Carried unanimously

**IV. OTHER BUSINESS**

1. 076-11 Sachem's Path Nantucket, LLC Sachems Path 40B Singer  
 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.

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

Alternates None

Representing Andrew Singer, Law Office of Singer & Singer, LLC

Tom Shevory, Project Manager Dellbrook Construction LLC-JK Scanlan Company LLC(JKS)

Kevin McGuire, Sachem's Path

Arthur Reade

Discussion (1:47) **Section F Condition 2:**

**Singer** – Read the change per recommendation by Ed Marchant.

**Toole** – This meets his concern.

**Section F Condition 7:**

**Singer** – The applicant's engineer designed the plan and met with Ed Pesce; a logistics plan was reviewed and approved. Explained the language change. Asked that Mr. Shevory review the plans.

**Shevory** – Reviewed in detail the changes/work per the engineering plans for both phases. Completion of Phase IIB should end approximately February 2018 except for landscaping and the road binder coat, which will be finished that Spring.

**Toole** – Assured that all roads will have a binder coat before anyone moves into Phase II.

**McCarthy** – Asked when Habitat for Humanity (H4H) predicts completion.

**Shevory** – January 2018 for Phase IIA house and July 2018 for the Phase IIB.

**Toole** – All water and sewer will go in for all of Phase II with all roads, sidewalks, and curbing at the same time. He doesn't understand why infrastructure is being phased.

**Shevory** – That is in the event of a delay in installation of water and sewer.

**Toole** – Our initial concern was we didn't want building permits issued and houses issued without the infrastructure. We can tie the infrastructure being completed into the Certificates of Occupancy (CO) to protect that from happening. They can't sell a house without a CO.

**O'Mara** – He's more concerned now in terms of the financial situation.

**McGuire** – They have a \$50,000 landscape bond in place; it won't be repaid until all landscape work is complete.

**Toole** – In his opinion, the guarantee will have to more than a \$50,000 bond.

**O'Mara** – Asked upon whose shoulder will the burden fall if the \$50,000 won't cover the work which has to be done.

**Singer** – There is language that says the finished coat for the roadways must be applied before completion of the last dwelling in the last phase; he can add after "finished coat for the roadways", "and the final landscaping before the last CO is issued."

**Toole** – He still doesn't think hanging this on one unit is sufficient. We need some reasonable protection that this work is completed.

**McGuire** – The \$50,000 is separate contractually from Dellbrook/JKS. We won't pay them until the work is done.

**Singer** – Suggested adding, "COs for houses in Phase II won't be issued until infrastructure is completed as per the logistics plan."

**Toole** – That works for him.

**McGuire** – Phase IIB has ten homes that would tie up all Phase II until the infrastructure is complete; that delays people who want to move into Phase IIA. That or the question is what bond size would the board accept?

**O'Mara** – This board spent a lot of time ensuring the project was fully financed and would be completed; now the board is being told that there isn't enough money and we have no explanation as to what happened. Asked if anyone is prepared to explain what happened financially.

**McGuire** – There have been significant price escalations on Island and their on-Island contractor for Phase I did not want to do Phase II. Now they have to bring a construction company from off Island. Site costs for Phase II have increased by about \$500,000 beyond originally budgeted.

**O'Mara** – There is a development fee involved with this project.

**McGuire** – That has been pledged; the gap is about \$800,000; they requested an additional \$500,000 from the Community Preservation Committee (CPC) to help pay the fees. CPC did not feel it was prudent to use their grant money for fees. That is why we are asking for fee waivers. We have pledged about \$300,000. This is not a market-rate project where they can capitalize on market increase. They did consider increasing costs on the 150% units; however if a 100% unit is moved to 150%, they lose the State subsidy for the 100% unit. One financial piece is the fee waiver and the other is Town Meeting. They've issued a letter of intent to JKS to hold those costs; they have firm commitment letters from the lender initiating the closing process

**Toole** – We need to find a mechanism to ensure the infrastructure is completed; he believes tying that to the CO is the best way; that or make the bond bigger. Asked the board members how they want to proceed: tie it up or continue for new language.

Discussion about how much the bond should be.

**Singer** – The bond is connected to Change 4G; if that becomes \$150,000, Condition 7 would keep the language as is and not tie it to any COs. Ed Pesce submitted a letter on the ZBA’s behalf that he believes the plan will work and is appropriate.

**Toole** – Referring to the engineering plan, at the completion of Phase IIA the binder coat will be throughout.

**Singer** – Suggested making a motion conditioned upon receipt of a letter from Dellbrook confirming that the bond be raised to \$150,000.

**Koseatac** – He doesn’t think \$150,000 is a big enough bond, and he’s not willing to vote until he sees the letter.

**O’Mara** – He would like to have H4H represented. If they can’t make it, he’d like to see a written comment that they are in agreement with the plan and that the houses will be finished at about the same time as Phase IIB.

Consensus is okay with the logistic plan change F7.

To come back on January 17, 2017 to discuss 4G.

**Paragraph 35 Last Condition:**

**Singer** – This regards fee waivers; the added paragraph is an affirmation that the BOS voted to grant waivers on sewer connection fees and building fees. In regards to Paragraph B, this broke down what is hard infrastructure and what is revenue; the applicant pays the hard infrastructure cost and the applicant is asking to waive the fee. The Water Commission supports the granting of the fee waiver; he will add that language.

Consensus has no concerns.

**Toole** – The changes to be ratified at the January 17, 2017 meeting.

**Motion to Continue to January 17, 2017.** (made by: Koseatac) (seconded by: O’Mara)

Motion

Vote

Carried unanimously

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

Voting

Toole, McCarthy, O’Mara, Koseatac, Poor

Alternates

Mondani

Discussion (3:05)

Discussion about a threshold upon which an applicant must pay to re-notice abutters: 3 months.

**O’Mara** – If an application is continued due to a quorum issue, the applicant shouldn’t be penalized.

**V. ADJOURNMENT**

Motion to Adjourn: 3:11 p.m.

Submitted by:

Terry L. Norton