Minutes for May 14, 2015, adopted June 10

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, Mark Poor, Michael Angelastro, Geoff Thayer

~~ MINUTES ~~
Thursday, May 14, 2015
Public Safety Facility, 4 Fairgrounds Road, Community Room –1:00 p.m.

Called to order at 1:04 p.m.

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

Agenda adopted by unanimous consent

I. APPROVAL OF MINUTES
1. April 9, 2015 – Motion to Approve. (made by: Botticelli) (seconded by: McCarthy) Carried unanimously

II. OLD BUSINESS
1. None

III. NEW BUSINESS
1. 67-14 Giedrius Miksys & Kristina Ralkova, et al as Owners, and Nantucket Properties, LLC & Trade Wind Cottages Condominium, as Applicants 40 & 42 Nobadeer Farm Road Beaudette Angelastro - Asked why this is being continued yet again.
Antonietti – This requires prior determination by the Planning Board. Further explained the situation with this application that has been causing the continuances. Continued to June 10, 2015

2. 14-15 Nantucket Cottage Hospital, Inc., 57 Prospect Street Bartleman Applicant seeks Variance relief pursuant to Zoning Bylaw 139-32 from the requirements contained within the definition of “tent” in Zoning Bylaw Section 139-2 to allow the “tent” to be erected for longer than thirty consecutive days per year. Use of the 20 X 40 square foot tent is proposed from June through September 2015 for the purposes of community outreach programs during normal hours of operation (9am to 5pm). The Locus is situated at 57 Prospect Street, is shown on Nantucket Tax Assessor’s Map 55 as Parcel 3, as Lot 10 on Land Court Plan 24831-A, and evidence of owner’s title is recorded Certificate of Title No. 3802 on file at the Nantucket County District of the Land Court. The property is zoned Commercial Neighborhood (CN).

Toole, Botticelli, McCarthy, Poor, Angelastro
Documentation: File with associated plans, photos and required documentation
Representing: Frank Kovac, Facilities Director – This is a similar request as last year to erect a tent for community outreach and education. The request is to have it up through the end of September.

Public Concerns (1:09) EWA – This is a request for relief from the definition of a Tent which prohibits more than 30 consecutive days use.
Poor – Asked about the actual size
Kovac – 20X40, 30 feet high, it will be in the same location as last year. The primary use is presentations by physicians and healthcare professionals for staff education.
Toole – Suggested adding dates.

Motion: Motion to Approve from June 1, 2015 to October 1, 2015 with the same conditions as last year. (made by: Botticelli) (seconded by: Poor)
Vote: Carried unanimously

3. 15-15 Sandra K. Comstock and Scott G. Comstock, Trustees of the Sandra K. Comstock Revocable Trust 27 Hinckley Lane Alger Applicant is requesting Special Permit relief pursuant to Zoning Bylaw Section 139-33 to allow the alteration and extension of a structure which is pre-existing nonconforming as to front and side yard setbacks. Specifically, applicant proposes to demolish, relocate and construct a replacement dwelling structure and new garage without loss of condominium status. While the side yard setback will be cured, the front yard setback will remain the same for the new relocated dwelling. The Locus is situated at 27
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Hinckley Lane, shown on Nantucket Tax Assessor’s Map 30 as Parcel 103.1, as Lot 2 on Land Court Plan 11929-C, and as Unit 2, known as “Starfish” of the “Starfish & Unicorn Condominium” upon Plan No. 2014-09. Evidence of owner’s title is registered Certificate of title No. U42234 on file at the Nantucket County District of the Land Court. The site is zoned Residential 20 (R-20).

**Sitting**  
Botticelli (acting chair), McCarthy, O’Mara, Koseatac, Angelastro

**Documentation**  
File with associated plans, photos and required documentation

**Representing**  
Sarah Alger, Sarah F. Alger P.C. – This is a two-dwelling condominium, the smaller unit is non-conforming pre-existing constructed prior to 1972. The proposal is to pick up the structure and move out of side yard setback. The plan is to renovate with the option to demolish and reconstruct, but they need to maintain the condo status. The renovation/reconstruction would add a small amount of groundcover but still within allowance.

**Public**  
Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP, for Elizabeth Von Summer at 27R Hinckley Lane – Asked if the plans before them are those approved by the Historic District Commission (HDC). (Yes.) Moving this farther from the street moves it closer to his client’s unit; that would be a concern; his client supports the application as proposed.

**Concerns** (1:14)  
**Botticelli** – The east side toward the street is being added to. If this is new construction, she doesn’t know why it shouldn’t meet the front yard setback as well.

**Alger** – That is permitted under the condo documents. The overall height is going from 22 feet and inches to 25 feet and inches.

**Angelastro** – Asked about the “1-story structure”.

**Alger** – It is a small garage connected to the dwelling.

**Koseatac** – In regards to letters of concerns from the neighbors, which asks if it is demolished, why it should continue to have the grand-fathered status.

**Alger** – There is the distinct possibility that the renovation will be so extensive that this will turn into a demolition; didn’t want to come in pretending this would be just a renovation. It is a small amount of groundcover being added and it relates as a second dwelling to the other unit.

**Reade** – There is language in the condo agreement that allocates a certain amount of groundcover permitted for each unit. Ms Alger’s client is working within that allowance.

**O’Mara** – Noted that the back is conforming and the west is moving away from the road about 6 inches.

**Angelastro** – Based upon the letters from neighbors, he doesn’t fully support a demolition. If the garage were moved into a parking space, the structure could be pulled back to almost conforming; he would feel better about that. The neighbors seem to have solid arguments. If the structure is demolished, this board can ask for the new structure to be more conforming.

**McCarthy** – Seeing that it is pretty much in the same area, a rebuild wouldn’t be a new non-conformance.

**Alger** – Under the condo agreement, the garage can’t be a separate structure; it must be attached to the dwelling.

**Botticelli** – Without the connector, the structure could move back 5 more feet and be even more conforming.

**Reade** – Believes his client would oppose anything that would move the structure toward his client’s house. They would prefer this proposed location as far as front-yard setback.

**Koseatac** – He is not a fan of demolishing and maintaining the grand-father status.

**Alger** – In her opinion, the neighbor’s concerns are not pertinent to this being substantially more detrimental to the neighborhood.

**Antonietti** – One neighbor withdrew all their concerns. Pointed out that there have been cases when a building was lifted to be moved, an engineer noted that the structure was not salvageable and it had to be demolished. Stated it is considerate of the applicant to ask in the event that is the case here.

**Alger** – Stated that the HDC has signed off on a demolition if it is necessary.

**Botticelli** – Stated she wished there would be an improvement to the front setback.

**Angelastro** – Asked to add to the motion no construction between Memorial Day and Labor Day except for landscaping.

**McCarthy** – Asked that natural wild vegetation be maintained 3 feet off the road as a screen and maintenance of existing natural vegetation.

**Motion**  
Motion to Grant the relief subject to a setback of 17.7 feet with no exterior construction between Memorial Day and Labor Day and maintenance of the existing buffer along the road and adding 3 feet of wild vegetation along the lot line. (made by: O’Mara) (seconded by: McCarthy)

**Vote**  
Carried 4-1/Koseatac opposed
4. 10-15 William F. Hunter, Trustee of The 1908 Realty Trust 47 Monomoy Road Alger Applicant is requesting Special Permit relief pursuant to Zoning Bylaw Sections 139-30.A and 139-33.A to alter and extend a relocated pre-existing nonconforming structure. In the alternative, Applicant seeks Variance relief pursuant to Section 139-32 from the maximum height allowance of thirty (30) feet in Section 139-17 in order to validate a height of 32.6 feet for the relocated dwelling. The structure is conforming in all other respects. The Locus is situated at 47 Monomoy Road, is shown on Assessor’s Map 54 as Parcel 295, and as Lot 5 upon Land Court Plan No. 14029-C. Evidence of owner’s title is recorded at Certificate of Title No. 23525 on file at the Nantucket County District of the Land Court. The site is zoned Limited Use General 1 (LUG-1).

Sitting Toole, Botticelli, McCarthy, O’Mara, Koseatac

Documentation File with associated plans, photos and required documentation

Representing Sarah Alger, Sarah F. Alger P.C. – Asked this be continued to allow time for the attorney for the neighbor to withdraw objections. This building was moved from Baxter Road and exceeds the 30-feet high restriction. Have been working about a year with the neighbor to resolve their concerns. No one has been able to figure out how to resolve the issue of its height; it has always been a tall building. Now requesting a variance. Chip Hart was the surveyor.

Public Mark Poor, as a private citizen – He did some research of the site and drawings and could find no evidence that the height was manipulated. Pointed out that there was no height mentioned on the HDC application, which is a fault of that commission.

Concerns (1:58) Toole – Will need some evidence showing that nothing was done that changed the ridge height or that the structure was set out of the ground in such a way as to make it more than 30-feet tall. The minimum 1st-floor elevation is 8 inches; suggested the board might have to go look at it.

Review of present-day photos and the site plant from the HDC application for the original move in an effort to ascertain what happened to cause the non-conformity.

Request for the HDC-approved drawings.

Alger – Reviewed concessions agreed upon with the neighbor at 45 Monomoy Road.

Motion Motion to Continue to June 10, 2015. (made by: O’Mara) (seconded by: Botticelli)

Vote Carried unanimously

5. 18-1514 Easy Street, LLC 14 Easy Street Cohen Applicant is requesting Modification of prior relief granted in Special Permit Decision No.’s 57-14 and 69-14. Specifically, applicant seeks clarification that renovation or, to the extent necessary, demolition and new construction may be allowed. Applicant further seeks removal of reference to historic preservation for basis of findings in prior relief. In addition, applicant seeks to modify Condition in Decision No. 57-14 which prohibits exterior construction between Memorial Day and Labor Day. Applicant requests approval to allow construction to continue until June 15, 2015 (instead of Memorial Day on May 25, 2015) in order to install and secure the foundation. The Locus is situated at 14 Easy Street, is shown on Nantucket Tax Assessor’s Map 42.3.1 as Parcel 13, as Lot B1 on Land Court Plan 7301-C and Lot A and a parcel of land lying east of Easy Street as shown on Land Court Plan 7301-B. Evidence of owner’s title is registered as Certificate of Title No. 25500 in the Nantucket County District of the Land Court. The site is zoned Commercial Downtown (CDT).

Sitting Toole, Botticelli, McCarthy, O’Mara, Koseatac

Documentation File with associated plans, photos and required documentation

Representing Steven Cohen, Cohen & Cohen Law PC

Jonathan Raith, owner

Public Angelastro, as a private citizen

Concerns (2:16) POINT 1: Cohen – Had applied for exemption for the 30-foot height restriction under three criteria but ended up qualifying under two conditions. Now need an exemption for it to be 33 feet tall. The original request was for 32 feet ridge height; the extra foot is the engineering required for the mechanicals.

Toole – Asked if all that evidence is included in the file. (Yes.) The original relief was asked for and granted based on the historic structure; now that historic structure has been demolished and now one foot added to the height. He wants to ensure the board is not being manipulated in order for the applicant to get a new building in excess of zoning height restrictions. Argues the new structure could have been designed within the 32 feet.

Cohen – The bylaw allows a new building to get that relief. At the time the relief was sought, they could have asked for this for a new structure; it is the same application for the same relief. This is an area with buildings taller than 33 feet. The engineering of this building was also designed to keep its height reduced. They are looking for Zoning to agree that they meet two of the criteria. HDC approved the new structure to reflect the historic structure.

Toole – They are asking for relief based upon a historic structure which is gone.

Koseatac – Stated that he was opposed to the original application.

Antonietti – Recommends modifying the original decision to alter Condition B: remove the clause that says it is necessary to preserve an historic structure.

Motion Point 1 Motion to grant the relief as read by Ms Antonietti. (made by: Koseatac) (seconded by: McCarthy)

Vote Carried 4-1//Toole opposed
Concerns continued

POINT 2:

Cohen – Asking for relief from the restriction for no exterior construction Memorial Day to Labor Day. Reviewed problems that caused his client to fall behind schedule. His client would like to be able to get some work done this season: get helical piles in before Memorial Day, put in forms, and pour foundation. All that can be done within the lot and not block road or sidewalk. The Board of Selectmen signed a letter asking ZBA not to grant this due to the possibility of blocking traffic to the Steamship Authority dock. Contends proposed work will not be a nuisance or cause a traffic jam.

O’Mara – Every truck entering the site is either backing in or backing out; this is a very conspicuous road.

Toole – He is skeptical that this could be done as painlessly as described. He agrees with Mr. O’Mara about getting in and out of the lot.

Raith – Trying to catch up because of the delays outside their control. Explained how the proposed work is quick and quiet. He will work very hard to ensure the neighbors are not complaining.

Angelastro – Asked about the National Grid cable.

Raith – It was an empty conduit.

Botticelli – Concerned about the street being blocked, it is small and busy. She is less concerned about the noise.

McCarthy – It would affect the traffic whenever it happens. If it is only a quick in and out; but there is the letter from the selectmen.

Antonietti – Asked if possible to condition that the trucks not back in or out during hours related to a peak in Steamship related traffic.

Toole – That is not enforceable. There is no support from the board.

Cohen – They will withdraw this request.

Motion Point 2

Motion to Approve the withdrawal of the request for the exterior construction restriction. (made by: O’Mara) (seconded by: Botticelli)

Vote Carried unanimously
7. **Carol B. Evens and Erik C. Evens**  
18 Sesapana Road  
Cohen

Applicant is requesting Special Permit relief pursuant to Zoning Bylaw Section 139-33 to allow the alteration and expansion of a pre-existing nonconforming dwelling on an undersized lot. Specifically, applicant proposes to remove a portion of the structure and construct an addition, resulting in a net gain of 85 square feet of ground cover. The alteration will increase the existing ground cover ratio from 4.5% to 4.7% where the maximum allowed is 3%. As so altered, the dwelling will remain conforming as to setbacks. In the alternative, applicants request Variance relief pursuant to Section 139-32 from the intensity regulations in Section 139-16. The Locus is situated at 18 Sesapana Road, shown on Assessor’s Map 68 as Parcel 94, and as Lot 13 on Land Court Plan 14664-C. Evidence of owner’s title is registered Certificate of Title No. 25546 on file at the Nantucket County District of the Land Court. The site is zoned Limited Use General 3 (LUG-3).

**Sitting**  
Toole, Angelestro, Koseatac, Poor, Thayer

**Documentation**  
File with associated plans, photos and required documentation

**Representing**  
**Steven Cohen**, Cohen & Cohen Law PC – Similar reliefs have been granted for this area due to a zoning freeze. Because this is just under 1500 square feet (SF) expansion requires a variance.

**Public**  
None

**Concerns (3:00)**  
Discussion about why a variance versus a special permit; clarification of how this structure is non-conforming.

- **Angelastro** – Could make the case that the shed was built prior to 120SF qualifying as groundcover.
- **Cohen** – The shed qualifies under the 10-year rule. They have been able to prove the age of the shed.
- **Toole** – The shed creates a non-conformity as it is in the setback. Suggested the shed should be moved out of the setback as part of the relief.
- **Cohen** – The shed is not part of the 4.5% calculation. His client is willing to accept a condition to move it out of the setback.
- **Poor** – If a Special Permit is granted, they can come back and ask for more. We could not deny them a special permit for more groundcover. He prefers the variance. We would be creating a non-conformity that otherwise does not exist aside from the shed.
- **Antonietti** – The board can condition that the owner would have to come back for more groundcover.

**Motion**  
Motion to Grant the special permit as requested and that any other additions/expansions must come to zoning and the shed be moved outside the setback. (made by: Angelastro) (seconded by: Koseatac)

**Vote**  
Carried 4-1/Poor opposed

**IV. OTHER BUSINESS**

1. June meeting is June 10 Wednesday.

**V. ADJOURNMENT**

Motion to Adjourn: 3:25 p.m.

Submitted by:  
Terry L. Norton