



# Planning and Land Use Services

Building • Historic District Commission • Planning Board • Zoning Board of Appeals

**Date:** 11/3/2023  
**To:** Zoning Board of Appeals  
**From:** Billy Saad  
Land Use Specialist  
**RE:** Staff Report for 11-9-23 ZBA Meeting

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### III. APPROVAL OF THE MINUTES:

4/13/23 – pgs. 6-9  
5/30/23 – pgs. 11-14  
6/13/23 – pgs. 16-18  
10/19/23 – pgs. 20-24

**Staff reviewed the minutes and recommends approval.**

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### IV. OLD BUSINESS (CONTINUED PUBLIC HEARINGS AND VOTES MAY TAKEN)

**09-22 Harris on Weweeder, LLC**  
*Action Deadline: November 17, 2023*  
**Continued to December 14, 2023**

**50 Weweeder Avenue**

**Brescher**  
*Sitting: SM, EA, MJO, GT, MP*

**20-22 Steven L. Cohen & Christopher P. Choma, Trs. 29 Monomoy Rd Nominee Trust,**  
*Action Deadline: November 17, 2023*  
**Continued to December 14, 2023**

**Cohen**  
*Sitting: SM, LB, EA, JB, JM*

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### V. NEW BUSINESS (INITIAL PUBLIC HEARINGS AND VOTES MAY BE TAKEN):

Pgs. 30-62

**13-23 Surfside Drive, LLC**

**5 Surfside Drive**

**Beaudette**

Applicant is seeking a modification of a Special Permit pursuant to Nantucket Zoning Bylaw Section 139-33 in order to alter and expand the pre-existing, nonconforming use by tearing down the existing commercial structure on the premises and replacing it. Locus is situated at 5 Surfside Drive, shown on Assessor's Map 67, Parcel 251 and shown as Lot 29 on Land Court Plan 26439-H. Evidence of owner's title is registered on

Certificate Title No. 27168 with the Nantucket County District of the Land Court. The site is zoned Residential-10 (R10).

Existing and Proposed Conditions are shown on **pages 41, and 43 of the packet**. The lot and its structures are preexisting nonconforming as to rear yard setbacks, use, parking, and driveway access. There is one garage structure currently used for the tent business, a shed, and two hoop tents. The pre-existing nonconforming commercial use (documented in the application) will be altered as follows:

1. Demolish the existing 1,810 ± single story commercial structure.
2. Remove the existing shed and two (2) hoop tents.
3. Construct a new, two-story mixed-use structure with a ground cover of approximately 2,160 square feet, containing approximately 3,840 sf of storage and warehousing between the basement and first floor.
  - a. The proposed structure is shown to be dimensionally compliant thus curing the setback nonconformities.
4. Construct a four (4) bedroom garage apartment on the second floor of the structure.
  - a. Allowed by right in the R-10 Zoning District
5. Install 8 parking spaces to provide 1 per 900 SF of commercial use (4), and 1 per space per Article 44, ATM 2023.
  - a. The parking requirements for Section 139-18 have been met

There is a well-established 3-prong “Powers Test” to determine whether a current nonconforming use is protected as such. In some instances, an existing use will lose the protection afforded a non-conforming use for failure to satisfy even one of the following tests:

1. Does the use reflect the nature and purpose of the use prevailing when the zoning bylaw took effect?
2. Is there a difference in the quality of character as well as the degree of use?
3. Is the current use different in kind in its effect on the neighborhood?

The tent rental commercial use has operated under a Special Permit since 2002. The Applicant’s addendum states that the proposed structure and corresponding commercial business will operate in the same manner as it has in the past, and will not be open to the public, only the applicant, staff, and residents of the building. The addition of the 4-bedroom apartment is allowed by right in the R10 zoning district, and therefore not subject to the Powers Test. Staff notes, that the removal of the previous structure, along with the associated tents and sheds, presents an opportunity to create a design that integrates better with the surrounding neighborhood than the existing structure. Additionally, the increase in size will enable the applicant to store and conceal all equipment related to the tent rental business more effectively.

Use	Town Residential Districts					
	R-1 SR-1	ROH SOH	R-5 R-SL	R-10 R-10L SR-10	R-20 SR-20	R-40
Primary dwelling	Y	Y	Y	Y	Y	Y
Secondary dwelling	Y	Y	Y SP R-SL	Y SP R-10L	Y	Y
Accessory dwelling	Y	Y	Y	Y	Y	Y
Tertiary dwelling	N	N	Y R-5 N R-SL	Y R-10 N R-10L N SR-10	Y R-20 N SR-20	Y
Apartment	N	N	N	N	N	N
Apartment building	N	N	N	N	N	N
Tiny house unit	N	N	Y R-5 N R-SL	Y R-10 N R-10L N SR-10	Y R-20 N SR-20	Y
Garage apartment	Y	Y	Y	Y	Y	Y

## GARAGE APARTMENT

A dwelling unit located within a residential or commercial garage. The dwelling unit shall not exceed 150% of the gross floor area of the garage. If located on the same lot as a primary dwelling unit, the following requirements shall be applicable:

[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009; amended 4-6-2011 ATM by Art. 64, AG approval 9-15-2011]

### (1)

Both dwelling units shall be in the same ownership unless one of the two dwelling units is subject to the NHNC. The ownership of a lot by a condominium cooperative housing corporation, land trust, or other common interest ownership entity in which there is a separate beneficial ownership of the primary dwelling and garage apartment on the lot shall not be deemed to constitute "the same legal and beneficial ownership."

### (2)

The Planning Board shall make a determination regarding the adequacy of access to the lot and structures prior to the issuance of a building permit. Planning Board approvals granted after April 8, 1996, shall be valid for a period of two years from the date of plan endorsement.

The question before the Board is whether there is a difference in the quality of character as well as the degree of use. It's noted that the proposed garage will comply with the current setback and dimensional requirements of the R10 zoning district. Two abutters' notifications were received in opposition and are included on **pages 56-62 of the packet**.

Staff is supportive of the Applicant's request and acknowledges the concerns expressed by the neighbors. Therefore, staff recommends approval, contingent upon a thorough discussion with the Applicant to address these concerns and establish conditions, including proposed hours of operation, parking of commercial vehicles, measures to mitigate construction disturbances, vegetative screening, and maintenance of Dias Road.

If the Board is inclined to approve this application, the following finding must be made:

#### Finding:

- 1) That the proposed alterations to the pre-existing, nonconforming garage structure and use upon the locus would not be substantially more detrimental to the neighborhood than the existing nonconformities.

As the existing nonconforming structure is being removed, the prior conditions should be updated with amendments incorporated as necessary, which includes amending condition D to address the floor area of the dwelling unit.

#### Original conditions from the Decision in File No. 35-02

- A) There shall be no exterior storage of goods or material upon the Locus, and the two 16-foot trailers used for transportation of tents may be parked outside between May 1 and October 31 in any given year.
- B) There shall be one business on site and all commercial activities upon the Locus shall be conducted by the Applicant, personally or through a single business entity operated or controlled by him;
- C) No active commercial activities shall be conducted upon the Locus on Sundays except between 9:00 A.M. and 5:00 P.M.;

D) The single dwelling unit within the garage structure shall not exceed 600 square feet in floor area.

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**14-23 Benjamin and Jacqueline deRuyter**

**12 Academy Lane**

**Beaudette**

Applicants are seeking Special Permit relief pursuant to Zoning Bylaw Section 139-33.A.(1)(b) to change the use of the preexisting nonconforming garage structure to a mixed-use shed and outbuilding/home office. Locus is situated at 12 Academy Lane, shown on Assessor's Map 42.4.3 as Parcel 87. Evidence of owner's title is recorded in Book 1789 and Page 243 with the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).

Applicants are seeking approval to convert a pre-existing nonconforming garage structure into a mixed-use "shed" and "outbuilding – other". The structure is sited within the 5' easterly side yard setback being constructed as close as 1.8 feet. No change in footprint or size is proposed. The property is benefitted by ZA Decision in File No 01-22, where the relief granted allowed for the garage structure to be extended three (3) feet northerly, toward Academy Lane. The Locus is pre-existing nonconforming as to ground cover, having approximately 4,105 square feet of area in the ROH district where a minimum lot size of 5,000 square feet is required.

The Powers test can again be applied.

- a. Does the use reflect the nature and purpose of the use prevailing when the zoning bylaw took effect?
- b. Is there a difference in the quality of character as well as the degree of use?
- c. Is the current use different in kind in its effect on the neighborhood?

Existing and Proposed Conditions are shown on **page 71 of the packet**. The lot is improved with a 1,203 SF DU and the 198 SF subject 'garage'.

Both a SHED and or OUTBUILDING are deemed an allowed Accessory Residential Use in ROH per Section 139-7.A.

The definition of Shed in Section 139-2.A is:

An accessory structure for storage purposes, not designed to be served by heat or plumbing and not to be used for habitation.

The definition of Outbuilding in Section 139-2.A is:

Detached accessory residential structure(s) such as a cabana, barn, hoop barn, shanty, greenhouse, gazebo, playhouse, fitness studio, home office, but not including dwelling units or structures used for habitation, studios, or sheds.

The project has obtained HDC approval by virtue of COA HDC2022-02-5789. The applicant's representative has explained to staff that the proposed home office would only be for personal use and not open to the public or clients. No abutters concerns were received.

Staff recommends approval with the following findings and conditions:

Finding:

- 1) That the change in use from a garage structure to a shed/outbuilding shall not be substantially more detrimental than the existing nonconforming structure and use to the neighborhood.

**Conditions:**

- 1) The proposed alterations and expansion shall be done in substantial conformity with the plans approved by Nantucket Historic District Commission Certificate of Appropriateness No. HDC2022-02-5789;
- 2) The project shall be completed in accordance with the “Site Plan to Accompany Zoning Board of Appeals Application”, dated March 25, 2022, prepared by Blackwell & Associates, Inc.
- 3) The home office shall be exclusively designated for personal use, with a strict prohibition on any commercial activities taking place on the premises.
- 4) There shall be no further alterations of the structure within the five-foot required side yard setback area without further relief from the ZBA.

Pgs. 84-111

**15-23 Allan and Darina McKelvie**

**6 Candle House Lane**

**Williams**

Applicants are seeking re-issuance and modification of a previous grant of relief in the Zoning Board of Appeals Decision in File No. 031-17. Applicants propose to alter and extend the garage structure as previously approved by Special Permit pursuant to Zoning Bylaw Section 139-33A. Additionally, Applicants are seeking clarification to remove the wooden portion of the structure, with the foundation to remain in place, and reconstruct as previously approved. Locus is situated at 6 Candle House Lane and shown on Assessor’s Map 55.4.4 as Parcel 52.1. Evidence of owner’s title is recorded as Lot 1 in Plan Book 20 and Page 107 with the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).

Prior relief was granted pursuant to Section 139-33A, to expand a pre-existing nonconforming garage structure being sited as close as .33 feet from the easterly side yard lot line with the foundation to remain in place, and the addition of a studio on the second floor. Applicants did not activate the Special Permit by obtaining a building permit and starting construction within the required 3-year period from the filing of the Decision.

Applicant has stated in their addendum that the relief they are seeking is identical to what was previously granted. The prior granted relief allowed for upward expansion within the easterly side yard setback in order to add a 2<sup>nd</sup> floor studio, dimensionally compliant installation of steps, a 2nd-floor deck, and an at-grade HVAC unit. The setback intrusion will not be made worse, and no new nonconformities will be created. For clarification and coordination with the new HDC approvals, the applicant requests that the Board grant the requested relief to demolish the wood structure without removal of the foundation which therefore protects the pre-existing nonconforming setback location.

Staff recommends approval with the following findings and conditions:

**Finding:**

- 1) That the proposed removal of the wood structure and maintaining of the existing foundation and reconstruction of the garage/studio would not be substantially more detrimental to the neighborhood than the existing nonconformities.

**Conditions:**

- 1) The demolition of the existing wood garage structure and proposed reconstruction shall be done in substantial conformity with the plans approved by Nantucket Historic District Commission COA # HDC2023-09-9140 (demo) and Certificate of the Appropriateness No. HDC2023-09-9147 (reconstruct);
- 2) The project shall be completed in accordance with the “Site Plan to Accompany Zoning Board of Appeals Application”, dated March 25, 2022, prepared by Blackwell & Associates, Inc.;
- 3) There shall be no further alterations of the structure within the five-foot required side yard setback area without further relief from the Zoning Board of Appeals.

**16-23 Lee and Priscilla Saperstein  
Williams**

**20 New Street**

Applicants are requesting a Modification of the previously granted Special Permit in File No. 014-05, which was further modified in File No. 086-06, File No. 043-08, and File No. 013-09. Specifically, Applicants are seeking to eliminate two (2) of the conditions in order to convert the studio structure to a secondary dwelling. Additionally, to the extent necessary, Applicants are seeking Special Permit relief pursuant to Zoning Bylaw Section 139-18, for a waiver of the onsite parking requirements. Locus is situated at 20 New Street, shown on Assessor's Map 55, Parcel 337. Evidence of owners' title is recorded in Book 943 and Page 342 with the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).

The applicants are seeking to modify previous relief granted to convert the preexisting nonconforming studio structure to a one-bedroom dwelling. In order to do so, the applicants are requesting the following conditions be eliminated from the Decision in ZBA File No. 014-05, **page 124 of the packet**:

- (d) The rear studio structure shall not be used for human habitation without further relief from this board;
- (f) There shall be no shower or tub in the bathroom of the studio.

The Powers test can again be applied.

- a. Does the use reflect the nature and purpose of the use prevailing when the zoning bylaw took effect?
- b. Is there a difference in the quality of character as well as the degree of use?
- c. Is the current use different in kind in its effect on the neighborhood?

Secondary dwellings are allowed in the ROH district, subject to the following requirements, which the Applicant meets:

- 1. The ground cover of the secondary dwelling shall be a minimum of 20% less or more than the primary dwelling.
- 2. The primary and secondary dwellings must be separated by a minimum distance of 10 feet, measured at grade at the closest point between the dwellings.

Two abutters' letters were received in support of the Applicants.

Additionally, the Board will need to make a determination regarding the appropriateness of the proposed off-street parking. The Proposed Conditions are shown on **page 117 of the Packet**. Two parking spaces are required and provided on the plan and meet parking space requirements per 139-18, having one 9' x 20' parking space and one 7' x 17' parking space. However, portions of the driveway width does not meet the standards of Section 139-20.1(B)(2)(f)(2), which requires the traveled surface of the driveway to be a minimum of 10 feet. Staff notes, this is an existing driveway.

Staff recommends approval with the following findings and conditions:

Finding:

- 1) That the change in use from a studio structure to a one-bedroom dwelling shall not be substantially more detrimental than the existing nonconforming structure and use to the neighborhood;
- 2) That the granting of the special permit for a parking waiver 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.

Conditions:

- 1) The project shall be completed in accordance with the “Site Plan to Accompany Zoning Board of Appeals Application”, dated March 25, 2022, prepared by Blackwell & Associates, Inc.
- 2) There shall be no further alterations or expansion within the require five foot rear and side yard setback without further relief from the Zoning Board of Appeals;
- 3) That an apron at the driveway intersection with New Street shall be maintained with a minimum depth of ten (10) feet and a maximum width of fifteen (15) feet, flared to a width not to exceed nineteen (19) feet;
- 4) That a minimum of two (2) parking spaces shall be provided;
- 5) That the driveways be cleared free of vegetation and obstruction to a width of twelve (12) feet and a height of thirteen (13) feet;
- 6) That any landscaping at the driveway entrance be limited to low-growing plant material not to exceed three (3) feet in height; and

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**17-23 C. Gail Greenwald and Roy F. Greenwald, Trustees of the Roy F. Greenwald Revocable Trust – 1994 and of the C. Gail Greenwald Revocable Trust - 1994 6&6A Washington Avenue Cohen**

Applicants are seeking a Variance pursuant to Zoning Bylaw Section 139-32, to exceed the allowable maximum ground cover in order to merge two lots. Locus is situated at 6 + 6A Washington Avenue and shown on Assessor’s Map 60.2.4 as Parcels 66 + 66.1. and shown as Lots 896 + 897 on Land Court Plan 3092-120. Evidence of owner’s title is registered on Certificate Title No. 27237 with the Nantucket County District of the Land Court. The site is zoned Village-Residential (VR).

The Applicant is requesting Variance relief to merge the two subject lots which will result in a ground cover overage. Per the Applicant’s addendum, a 1960s dwelling structure was moved onto the lot in 2013. This relocation was necessitated by significant erosion from another property owned by the Applicant, which was located at 336 Madaket Road. The move of the structure caused an overage in the ground cover ratio when combined with existing structures on the lot at 6 Washington Avenue.

To address this situation, the Applicant obtained approval for a 4181L subdivision, resulting in the creation of separate front and rear lots at 6 and 6A Washington Avenue. This subdivision effectively resolved the ground cover overage.

However, the Applicant is now requesting relief due to a problem with the shared septic system that serves both lots. The current septic system has failed, and rectifying the issue poses a hardship, likely necessitating the need for a Variance issued by the Board of Health.

Staff recommends the Applicant obtain and submit a letter from the Health Department confirming the challenge of obtaining a Variance for septic on the subject lots.

If the Board is inclined to approve this application, the following finding must be made:

Finding:

- 1) That owing to circumstances relating to the shape or topography of the lots and structures thereon 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, 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.

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**VI. OTHER (VOTES MAY BE TAKEN)**

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- **2024 Zoning Board of Appeals Meeting Schedule**

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**VII. ADJOURNMENT (VOTE WILL BE TAKEN)**

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