



# ZONING BOARD OF APPEALS

2 Fairgrounds Road  
Nantucket, Massachusetts 02554  
[www.nantucket-ma.gov](http://www.nantucket-ma.gov)

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

## ~~ MINUTES ~~

**Thursday, February 10, 2022**

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

*This meeting was held via remote participation using ZOOM and YouTube.*

Called to order at 1:00 pm and announcements made by Ms. McCarthy

Staff in attendance: Leslie Snell, Deputy Director of Planning; Adrian Rodriguez, Administrative Specialist; Terry Norton, Town Minutes Taker

Attending Members: McCarthy, Botticelli, Toole, O'Mara, Allen, Poor, Thayer, Mondani

Early Departures: O'Mara, 2:00 pm; Allen, 3:08 pm

Agenda adopted by unanimous consent

Motion **Motion to Approve.** (made by: O'Mara) (seconded)

Vote Carried 5-0//McCarthy, Botticelli, Toole, O'Mara, Allen-aye

### I. APPROVAL OF MINUTES

1. January 13, 2022

Motion **Motion to Approve as written.** (made by: Toole) (seconded)

Vote Carried 5-0//McCarthy, Toole, O'Mara, Allen, and Poor-aye

### II. OLD BUSINESS

1. 37-21 Kristina & Nicholas Amendolare 8 Bank Street Williams
- Applicants are seeking a Special Permit pursuant to Zoning Bylaw Sections 139-30 and 139-33A to make renovations, including an addition, to a single-family dwelling that is pre-existing non-conforming to the setbacks. Locus is situated at 8 Bank Street, shown on Assessor's Map 73 and Parcel 69. Evidence of owner's title is recorded in Book 1770, Page 216 on file at the Nantucket County Registry of Deeds. The site is zoned Sconset Old Historic (SOH).
- Voting McCarthy, Botticelli, Toole, O'Mara, Allen
- Alternates Thayer, Mondani
- Recused None
- Documentation File with associated plans, photos, correspondence and required documentation
- Representing Linda Williams
- Public Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP, for Jeff Gardner at 9 Front Street & Broadway  
Margaret Van Deusen, 7 Front Street  
Kathy Arvay, 11 Front Street  
Lisa Soeder, 13 Broadway  
Lynn Filipiski, President Sconset Civic Association
- Discussion **Williams** – Submitted the engineer's basement plan and the letter from the Select Board upholding the Historic District Commission (HDC) approval. This is no taller than other structures in the immediate area. The abutters view is not before the ZBA. Would accept the condition of no further construction within the setback.  
**Botticelli** – We didn't have a basement plan at the last hearing, but the elevation was showing a window well; now we have the basement floorplan.  
**Toole** – Asked if the window well can be in the setback (yes).  
**Botticelli** – Usually we have requested and gotten a construction protocol. Would like to see that.  
**Thayer** – Doesn't think they've gotten to that point in planning.  
**Williams** – That isn't legally required at this point; the foundation plan and engineer permit are required for the Building Permit and must be submitted at that time.  
**McCarthy** – That is true for a property that doesn't come before the ZBA. However, since you are requesting relief from us, we require more detail and can request those. Asked Members if they want to see more detail.  
**O'Mara** – He would like to see it and know how the bank will be protected that and be assured that none of the property line will disappear during construction. They will have to do it anyway. Considering the location and our reputation being at stake, he'd like to see it.  
**Williams** – If we remove that section within the setback, the ZBA has no jurisdiction.  
**McCarthy** – If you want to make that change so it conforms, and you don't have to be here, that is your choice.

**Botticelli** – It is a very small intrusion into the setback but given the proximity to the road and sensitivity of the sight, we want to see how the road will be protected.

**Williams** – Asked if they agree to not put a foundation under the section in the setback, would that make a difference regarding the engineer plan.

**Toole** – That would cut the basement through the basement egress.

**McCarthy** – We want to give this the same level of scrutiny we give other sites in similar situations.

**Thayer** – He’d be willing to move forward that Wayne McArdle is the design supervisor, and everything is built to his design and under his specifications.

**McCarthy** – There’s no guarantee he will be the one to finish the project.

**Toole** – If the Building Department will approve those plans, questions why we can’t see them and assure they are done.

**Mondani** – He visited the site and he’s not as concerned about it. Unlike other lots, we don’t have an adjoining structure that could be undermined. It’s a Town road and he’s okay with it.

**Snell** – If the Board wants to entertain it as a condition, you could include the scope of engineers that this specific engineer has to be involved; if he can’t be involved, they must come back for a modification.

**Allen** – She’d be willing to approve this as drawn with the submission into the files of a sound engineering plan. Also likes Ms. Snell suggestion.

**Reade** – He’s representing them with regard to the stability of the bank and that construction of the basement won’t damage the bank. The letter from Mr. McArdle doesn’t set for a plan regarding work to be done; he hasn’t even inspected the site. We’ve engage a geo-technical engineer to peer review Mr. McArdle’s recommendations. The letter states that the structural plans are based upon “assumed” soil conditions and that it’s not intended for construction. It was clear in the last hearing that board members were asking for detailed plans on how the site would be handled; you don’t have that. The applicant should be required to provide all that so that all parties have the best information available at the time you make a decision.

**Toole** – He agrees we should have plan; we’ve required it in the past. Asked if there’s somewhere on the plan that shows the intrusion in the plan; it should be clearly on a plan where the shed roof starts and ends.

**Van Deusen** – We are directly across Middle Gully from 8 Bank Street. It looks like excavation will extend 10’ below grade. Our house is about 100 years old and doesn’t have a foundation; it’s on pilings. The bank is fragile and eroding. This is a demolition. This isn’t about neighbors’ views; I’m addressing public views. We understand what a change like this so close to the bank will have to the bank, Middle Gully and Front Street. We believe this will be substantially detrimental to the neighborhood. Middle Gully is the emergency access road for Codfish park and the water main runs under the road.

**McCarthy** – She’s hearing that the neighbors and voting board members are concerned about the process and want to see the engineering plans and more information on the process as we’ve required in the past. She hasn’t heard anyone against the request, just a need for more information.

**Williams** – Mr. McArdle is out about 6 to 8 weeks; we’re on his schedule. She takes issue with the statement that it will be substantially detrimental to the neighborhood; most changes are outside the setbacks.

**Reade** – Our position regarding the detriment to the neighborhood, we are speaking to the possible undermining of the stability to the bank and so to the houses and properties in the neighborhood.

**Arvay** – We own down to Bank Street and abut this property. Our concern is the stability of the bank. Also, Bank Street is a very narrow road; we are hoping that there is no construction in the summer.

**Soeder** – My home is 270 years old and she too is very concerned about the stability of the bank and the height of the structure, which impacts the view scape. She too hopes we don’t have to endure a long period of construction.

**Filipski** – The SCA has forwarded a letter of concern about stability of the bank, since it supports the emergency access. Also, any evacuation of Codfish Park would have to come up Middle Gully Road. We might be looking at a composite of soils that might not be very stable. The ZBA has to look at that very carefully; if the bank is damaged, there is no going back.

**Allen** – If we have a proper engineered plan in place, she doesn’t see how anything being proposed would be a danger to Codfish Park.

**Williams** – There is no intent to do exterior construction in the summer and we can’t block a road without a Town permit.

**McCarthy** – We would add the standard restriction of no construction in the summer. We are looking for a foundation plan, detailed scope of services, mitigation plan on how the bank will be supported during a substantial storm, construction protocol, whether or not the metal sheathing will remain. If the requested information won’t get to us until the day before the meeting, it would be better to continue to April.

**Motion to Continue to March 10<sup>th</sup>.** (made by: Botticelli) (seconded)

Carried 5-0//McCarthy, Botticelli, Allen, O’Mara, and Toole-aye

Motion

Vote

2. 22-21

Adam Delaney-Winn, Trustee of Warren’s Landing Nominee Trust 40 Warrens Landing Road Reade

Applicant is appealing the determination of the Zoning Enforcement Officer that the driveway accessing the locus from Blue Heron Way is in violation of Zoning Bylaw Section 139-20.1B(1) because there is an additional driveway access from Warren’s Landing Road. Locus is situated at 40 Warren’s Landing Road, shown on Assessor’s Map 38 as Parcel 45, and as Lot 10 upon Land Court Plan 16956-E.

Evidence of owner's title is registered on Certificate of Title No. 27280 with the Nantucket County District of the Land Court. The site is zoned Limited Use General 2 (LUG-2).

Voting McCarthy, Botticelli, Toole, Allen, Mondani  
 Alternates Poor, Thayer  
 Recused None  
 Documentation File with associated plans, photos and required documentation  
 Representing Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP  
 Public None  
 Discussion **Snell** – It was requested that this be continued.  
 Not opened at this time.

Motion **Motion to Continue to March 10<sup>th</sup>.** (made by: Toole) (seconded)  
 Vote Carried 5-0//McCarthy, Toole, Allen, Botticelli, and Mondani-aye

3. 29-21 CRH 46 Surfside, LLC 46 Surfside Road Halik  
 Request to Withdraw

Voting McCarthy, Botticelli, Toole, Allen, Mondani  
 Alternates Poor, Thayer  
 Motion **Motion to Accept the Withdrawal.** (made by: Botticelli) (seconded)  
 Vote Carried 5-0//McCarthy, Botticelli, Allen, Toole, and Mondani-aye

**III. NEW BUSINESS**

1. 01-22 Cheryl Gilbert 16 D Street Maxwell  
 Applicant is seeking a Special Permit pursuant to the Zoning Bylaw Sections 139-33 A. 1 (a) (b) (c) to add second floor to main house that has an existing non-conforming setback of 8.7' where 10' is required. Locus is situated at 16 D Street, shown on Assessor's Map 60.2.1 as Parcel 2 and as Lot 87 B upon Land Court Plan 3092-T. Evidence of owner's title is registered on Certificate Title No. 28235 with the Nantucket County District of the Land Court. The site is zoned Village Residential (VR) and located in the Village Height Overlay District (VHOD).

Voting McCarthy, Botticelli, Toole, Allen  
 Alternates Poor, Thayer, Mondani  
 Recused None  
 Documentation File with associated plans, photos and required documentation  
 Representing Ryan Maxwell, Bracken Engineering  
 Public  
 Discussion **Maxwell** – Reviewed the request. The village overlay district limits height to 25'; this is 22'. There are no footprint changes; just getting taller. We have HDC and Conservation Commission approval.  
 Clarification of the plans regarding construction and the request.  
**Mondani** – The 25' buffer is shown as a straight line and the porch encroaches; asked if that is an issue (no).

Motion **Motion to Approve relief as requested with the attachment of the Bracken site plan.** (made by: Botticelli) (seconded)  
 Vote Carried 5-0//Botticelli, Allen, Toole, McCarthy, and Mondani-aye

2. 02-22 Zero India Street, LLC 1 Cambridge Street, Unit 2 Alger  
 Applicant is seeking a Special Permit pursuant to the Zoning Bylaw Sections 139-30 and 33.A (1) (a) to alter and extend a pre-existing, nonconforming structure on a pre-existing, nonconforming lot. Locus is situated at 1 Cambridge Street, Unit 2 and shown on Assessor's Map 42.3.1 as Parcel 130.2 and upon Plan No 2020-55. Evidence of owner's title is recorded in Book 1779, Page 136 on file at the Nantucket County Registry of Deeds. The site is zoned Commercial Downtown (CDT).

Voting McCarthy, Botticelli, Toole, Allen, Thayer  
 Alternates Poor, Mondani  
 Recused  
 Documentation File with associated plans, photos and required documentation  
 Representing Sarah Alger, Sarah F. Alger P.C  
 Matt MacEachern, Emeritus Development  
 Joshua Bancroft, Emeritus Development  
 Public Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP for D. Eric McKechnie Unit 1 (6 South Water Street)  
 Discussion **Alger** – Reviewed the request: add 96sf of 2<sup>nd</sup>- & 3<sup>rd</sup>-floor area over a setback intrusion. We will be removing the encroachment along the north side. This has a zero front and side setback and 5' rear setback. Groundcover is being reduced by a very small amount. There would be a prohibition against any work in the summer.  
**Bancroft** – The new portion will be slab on grade construction. We will demolish the north half, removed the foundation, go down 4' for a cross wall, then slab on grade.  
**Toole** – That is a pretty intense area even into October; work is going right to the lot line and there will be erosion and over dig; we as a board need to think about that.  
**Botticelli** – They'll certainly be into the sidewalk. Mr. Toole's point is to push out the construction ban date to at least Columbus Day. They have an HDC approval; they're back before the HDC for a reduction in the footprint.

**MacEachern** – We will have to have a sidewalk closing plan. We might create a storage loft in the 3<sup>rd</sup> floor; there's not enough head height for livable 3<sup>rd</sup>-floor space.

**Bancroft** – The highest point is 28'8". The McKechnie building is over 30'.

**Botticelli** – Because of the unusual shape, she can see why it's only 28'8"; it's tall and narrow.

**McCarthy** – Unit 1 had a prohibition on construction between May 15<sup>th</sup> and October 15<sup>th</sup> of any year. We can mirror that.

**Reade** – Mr. McKechnie is opposed to this project. In the past, the position of the Board when dealing with a condominium project, condominium association is required to amend the condominium documents. His client has not assented nor will be amenable to the amendment of the documents. His objections are related to the use as a restaurant; that would have a substantial detrimental effect on Unit 1 because of the exhaust fans and dumpster. The condominium documents can't be amended without his consent.

**Snell** – It is not premature to be here without approval of the amended condominium documents. They can file an application to be discussed. She will look into what has happened in the past.

**Alger** – None of Mr. McKechnie's concerns are relevant to the application before you; all uses of the property are permitted by right. The only question is whether or not the upward expansion over North Union Street will be substantially detrimental to the neighborhood. If we were to reduce this to be within compliance, everything we are doing would be a matter of right under the bylaw. She's not aware of any situation where the Board required approval or signoff of any other condominium owner or condominium association; those are private matters. She argues that just by being before the ZBA, this is more beneficial to the neighborhood due to the imposition of any number of restrictions.

**McCarthy** – The only place she's aware of that concern is with the HDC. Even if we approve this, a condominium association could further restrict the project. We would ask neighbors to get together and come to some solution; doesn't know if the condominium owners have done that.

**Reade** – Marianne Hanley had communication with Mr. MacEachern's office. Mr. McKechnie never got notice of this application; he doesn't plan to make an issue out of that. However, he is concerned about the whole process. Details could have been worked out through the condominium documents. Any change to a condominium has to be done through an amendment to the documents; still feels it's premature for the applicant to be here without that having been done. The applicant didn't get approval to change the condominium documents. We'd be willing to discuss what can be done to ameliorate the situation.

**McCarthy** – One condition would be "in conformity with HDC plans attached." If there were any changes, they'd have to back to the HDC and then back to the ZBA.

**Alger** – We're only here for the easterly 5' setback; it's unlikely that will change.

**MacEachern** – He's reached out to Mr. McKechnie and been very transparent about the plans and made preemptive changes at the neighbor's request.

**Allen** – The HDC reviewed and voted on the changes without participation from the other condominium owner; asked why ZBA can't.

**McCarthy** – In our process, when there are aggrieved abutters, we urge further conversations to come to an agreement. This is also an option within the Condominium Assn to address the physical changes.

**Toole** – Asked if there was any thought, after HDC asked to drop the height, about meeting the program at a lower height.

**MacEachern** – We wanted the 3<sup>rd</sup>-floor program, which will be used; losing that program is no small thing. We could further lower the building but in the core district, a number of buildings are over 30' and we're under. The reduced height is the result of the HDC process.

**Allen** – There seems to be discrepancy between Mr. MacEachern and Mr. Reade about the amount of conversation with the neighbor.

**McCarthy** – We do normally take the neighbor's objections to heart. There is the ability in this case for the owner to voice his objections in the amendment of the Condominium documents.

**Alger** – She hasn't heard any objections from the neighbor regarding why we are here before the ZBA.

**Toole** – Wants to know where the exhaust vents are going.

**Alger** – That's not part of our request to raise the height in the setback.

**McCarthy** – We look at the project as a whole; we can request changes outside the request.

**Botticelli** – Regarding the equipment, this is a highly visible site.

**MacEachern** – The exhaust equipment isn't usually reviewed by HDC unless it's very visible. We are still developing the use of the 1<sup>st</sup> floor; still have a way to go as far as use is concerns.

**Allen** – Three sides of this structure are exposed to streets; if the exhaust doesn't go where it is now, we might not want it facing any of these streets.

Motion **Motion to Grant the relief as request with no work between May 15 and October 15 and built in conformity with the HDC plans and COA HDC2021-03-3268.** (made by: Allen) (seconded)

Vote Carried 4-1//Allen, Thayer, Botticelli, and McCarthy-aye; Toole-nay

**IV. OTHER BUSINESS**

1. Nantucket Coastal Resilience Workshop ZBA Representative

- Prep Session – Wednesday, February 23, 2022 Via Zoom 9:30am - 10:30am
- In Person Workshop – Monday-Tuesday, March 7- 8, 2022 8am - 3:30 pm

**McCarthy** – She won't be available to be the representative for this. You can think about this; if anyone is interested, reach out to Ms. Snell. She will forward the email to Mr. O'Mara to see if he's available.

**V. ADJOURNMENT**

Motion **Motion to Adjourn at 3:09 pm (made by: McCarthy) (seconded)**

Roll-call vote Carried unanimously

Sources used during the meeting not found in the files or on the Town website:

1. None

Submitted by:

Terry L. Norton