



# 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), Elisa Allen (Clerk), Michael J. O'Mara, Ed Toole  
**Alternates:** Mark Poor, Geoff Thayer, Jim Mondani

## ~~ MINUTES ~~

**Thursday, September 8, 2022**

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

Called to order at 1:15 pm and announcements made by Ms. McCarthy

Staff in attendance: Leslie Snell, Deputy Director of Planning; Billy Saad, Land Use Specialist; Marcus Silverstein, Town Lighting Officer and Zoning Enforcement Officer; Terry Norton, Town Minutes Taker (via YouTube)

Attending Members: McCarthy, O'Mara, Allen, Poor, Mondani

Absent: Botticelli, Toole, Thayer

Agenda adopted by unanimous consent

Motion **Motion to Approve as revised.** (made by: O'Mara) (seconded)  
Vote Carried 5-0

### I. APPROVAL OF MINUTES

1. August 11, 2022

Motion **Motion to Approve.** (made by: Allen) (seconded)  
Vote Carried 5-0

### II. OLD BUSINESS

1. 37-21 Kristina & Nicholas Amendolare 8 Bank Street Williams  
CONTINUED TO OCTOBER 13, 2022

Motion **Motion to Continue. (made by: O'Mara) (seconded)**  
Vote Carried 5-0

2. 22-21 Adam Delaney-Winn, Trustee of Warren's Landing Nominee Trust 40 Warren's 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, O'Mara, Allen, Poor, Mondani

Alternates None

Recused None

Documentation File with associated plans, photos and required documentation

Representing Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP

Public Jennifer Kerry, Sarah F. Alger P.C for 34/32 Warren's Landing Road

Discussion (2:24) **Reade** – Presented supplemental materials at the table. Explained the situation behind the reasons for the appeal. We have a grassy area that starts at the dwelling and extends out to meet Blue Heron Way at grade; it's possible for a vehicle to drive into it. We propose to enter into a stipulation, agreed to by Mr. Silverstein, that the owner won't have more than 1 vehicle access until they have a Special Permit for a 2<sup>nd</sup> driveway, there won't be access from Blue Heron as long as the driveway from Warren Landing exists, the ZEO won't issue a fine for the Blue Heron Way access. This grassy area has been used for pedestrian and bicycle access to Blue Heron Way.

**Silverstein** – We know that in the early 1970s, there was a driveway between Warrens Landing and this current access. In 1998, it became a requirement to have a special permit for a 2<sup>nd</sup> curb cut and 2003 the opening was restored. The prior owner said it was used by landscapers and to bring his boat in and out. There hasn't any sign of use over the past few months. He's reluctance in accepting Mr. Reade's letter promises the owner won't drive over it but the violation is the access; there seems to be reluctance to pinch that down to prohibit any vehicular use. The problem could be solved by some effort on the part of the owner to block it from vehicular use.

**Reade** – His client is willing to agree to not use it for vehicular access but isn't willing to block it off; explained those reservations.

**McCarthy** – If he's concerned about public safety, the blockage could be set back off the road. We're looking to decide whether or not to uphold Mr. Silverstein's decision and determine if the grassy area is being used now and constitutes a driveway. If the owners want to keep it as is, the owner needs to get a special permit from the DPW for a 2<sup>nd</sup> curb cut.

**Mondani** – He doesn't think the ZBA can require a fence or bolder.

**Allen** – Asked if anything is stored in this area (no). Confirmed that if this were to become a second curb cut, confirmed they would have to go through the Conservation Commission for construction of the driveway.

**Kerry** – The appeal states the 2<sup>nd</sup> driveway exists pre-1998; photos indicate it did not exist in 1998 and should ask for a special permit. Her clients argue it is being used for vehicular access from Blue Heron Way and the proposed stipulation will have no effect. They ask for a fence or boulder to block the access. Asking that the appeal be denied.

**Silverstein** – This order is for a secondary driveway access. If the ZBA upholds the violation, they must seek the Special Permit.

**Reade** – The plan shows a clearing where the grassy area meets Blue Heron Way. If a physical obstruction were required here, everyone on the Island with a clearing at grade to a road would also be required to physically block the area.

Motion **Motion to Uphold the ZEO's determination.** (made by: Mondani) (seconded)

Vote Carried 4-1//Poor opposed

3. 09-22 Harris on Weweeder, LLC 50 Weweeder Avenue Brescher  
CONTINUED TO OCTOBER 13, 2022

Motion **Motion to Continue.** (made by: Allen) (seconded)

Vote Carried 5-0

### III. NEW BUSINESS

1. 10-22 Paul P. Moran & Jean M. Moran 4 Washington Avenue Santos  
CONTINUED TO OCTOBER 13, 2022

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

Vote Carried 5-0

2. 11-22 Benjamin Rubenstein & Arienne Bistany 51 Tennessee Avenue Williams  
Applicants are seeking Special Permit relief pursuant to Nantucket Zoning By-law Sections 139-2 and 139-7A in order to install an inground swimming pool. Locus is situated at 51 Tennessee Avenue, shown on Assessor's Map 59.4 as Parcel 202 and as lot 138,147,150 upon Land Court Plan 3092-S. Evidence of owner's title is registered on Certificate of Title No. 27878 with the Nantucket County District of the Land Court. The site is zoned Village Residential (VR).

Voting McCarthy, O'Mara, Allen, Poor, Mondani

Alternates None

Recused None

Documentation File with associated plans, photos and required documentation

Representing Linda Williams

Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP

Public Bruce Mandell, 10 Midland Avenue

Discussion (1:18) **Williams** – Explained the reasons for the Special Permit; there is no exterior pool lighting. Pool has an autocover. The property is on Town water. The vegetative screen will be augmented and maintained. The addendum includes all conditions the ZBA normally puts on pools.

**O'Mara** – Expressed concerns about leaving water in a pool over the winter with just an autocover and collection of water or snow on the cover.

**Allen** – Where the vegetation is marked in red along M Street, asked if that is being removed for access during construction. The neighbors might feel more comfortable with the project as long as the vegetation and roots in that 100' swath of M Street aren't removed. Asked if there could be a condition that none of that vegetation be removed.

**Williams** – Access will be from Washington; there is no anticipation of removing vegetation along M Street. They don't want to condition the vegetation should a situation arise requiring opening from M Street.

**McCarthy** – Wording in some of the conditions should be more detailed.

**Mondani** – Asked about a condition requiring restoration of M Street to the condition prior to construction.

**Snell** – You can include a condition requiring M Street between Washington and Tennessee be regraded prior to sign-off of the pool.

**Mandell** – A group of concerned Madaket resident reviewed this and request some subsequent changes. Reviewed proposed wording changes for the ZBA to consider regarding the 9 conditions generally contained for relief in the Madaket VR district.

**Williams** – Rebuttals and comments regarding Mr. Mandell's proposed changes.

**Allen** – Asked for any lighting to be shown on the plans; it would also indicate the lack of lighting.

**McCarthy** – We'll condition it for no deck or landscape lighting.

**Mondani** – He supports some of Mr. Mandell's clarifications except for those that are required by code.

Discussion about which changes Mr. Mandell proposed to incorporate into the ZBA's conditions for the Special Permit.

**McCarthy** – Read the conditions in include accepted wording changes.

Discussion about the Dark Skies Initiative and Town Code Section 102 versus all lighting being turned off at 10:00 pm.

Motion **Motion to Approve the Request with the discussed conditions.** (made by: Allen) (seconded)

Vote Carried 5-0

### IV. OTHER BUSINESS

1. None

**V. ADJOURNMENT**

Motion **Motion to Adjourn at 3:05 pm.** (made by: Mondani ) (seconded)  
Vote Carried 5-0

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

1. None

Submitted by:  
Terry L. Norton