



# 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, October 13, 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 12:00 pm and Announcements made by Ms. McCarthy

Staff in attendance: Leslie Snell, Deputy Director of Planning; Paul Murphy, Building Commissioner; Billy Saad, Land Use Specialist.

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

Absent: Toole, Thayer

Late Arrivals: Mondani, 12:14; Poor, 1:04

Early Departures: Allen, 1:45

Agenda adopted by unanimous consent

Motion **Motion to Approve as revised.** (made by: Botticelli) (seconded)

Vote Carried 4-0

## I. APPROVAL OF MINUTES

1. September 8, 2022

Motion **Motion to Approve.** (made by: Botticelli) (seconded)

Vote Carried 4-0

## II. OLD BUSINESS

1. 37-21 Kristina & Nicholas Amendolare 8 Bank Street Williams

Request for continuance

Voting McCarthy, Botticelli, O'Mara, Allen

Alternates None

Recused None

Documentation File with associated plans, photos and required documentation

Representing None

Public None

Discussion (12:03) **Snell** – Talked to the applicant; this is continued to November 10<sup>th</sup>; need to ensure everyone is here. Not opened at this time.

Motion **Motion to Continue to 11/10/2022.** (made by: Botticelli) (seconded)

Vote Carried 4-0

2. 09-22 Harris on Weweeder, LLC 50 Weweeder Avenue Brescher

Request for continuance

Voting McCarthy, Botticelli, O'Mara, Allen

Alternates None

Recused None

Documentation File with associated plans, photos and required documentation

Representing None

Public None

Discussion (12:13) Not opened at this time.

Motion **Motion to Continue to 11/10/2022.** (made by: Botticelli) (seconded)

Vote Carried 4sd-0

## III. NEW BUSINESS

1. 10-22 Paul P. Moran & Jean M. Moran 4 Washington Avenue Santos

Applicants are seeking Special Permit relief pursuant to Nantucket Zoning By-law Sections 139-30 and 139-2 in order to install an in-ground swimming pool. Locus is situated at 4 Washington Avenue, shown on Assessor's Map 60.2.4 as Parcel 65 and upon Land Court Plan 14672-A. Evidence of owner's title is registered on Certificate of Title No. 27684 with the Nantucket County District of the Land Court. The site is zoned Village Residential (VR).

Voting McCarthy, Botticelli, O'Mara, Allen

Alternates None

Recused None

Documentation File with associated plans, photos and required documentation

Representing None  
 Public None  
 Discussion (12:04) **Snell** – Had a last-minute request to continue this to November 10<sup>th</sup> as well.  
 Motion **Motion to Continue to 11/10/2022.** (made by: Botticelli) (seconded)  
 Vote Carried 4-0

\*12-04 to 12:14 to allow more Board members to arrive

2. 12-22 John Esposito 14 Eat Fire Spring Road Pierce Atwood  
 Applicant is appealing the building permit within the time allowed by G.L.c. 40A, § 15 for appeals under G.L.c. 40A, § 8: (1) as persons aggrieved by the decision of the inspector of buildings to issue building permits despite a violation of the Code, and (2) as persons aggrieved by the inability to obtain a stop-work order from the Building Commissioner pursuant to G.L.c. 40A, § 7 despite an acknowledgement that the Property owners are not in compliance with the Code. The Locus subject to the appeal is situated at 12 Eat Fire Spring Road, shown on Assessor’s Map 20 as Parcel 62, and as Lot 84 upon Land Court Plan 6283-8, 2 Sheet 2. Evidence of owner’s title is registered on Certificate of Title No. 28818 with the Nantucket County District of the Land Court. The site is zoned Limited Use General 3 (LUG-3).

Voting McCarthy, Botticelli, O’Mara, Allen, Mondani  
 Alternates None  
 Recused None  
 Documentation File with associated plans, photos and required documentation

Representing Kathleen Heyer, Pierce Attwood, LLP  
 Public Steven Cohen, Cohen & Cohen Law P.C  
 Discussion (12:14) **Heyer** – Reviewed objections/issues leading to this appeal. A fine of \$1691 was levied on the owners of 12 Eat Fire Springs Road; feel the fine should have been \$300 per day from the start of construction in June which is significantly more. Our hope is that the ZBA will require the owners to work with the Building Department to comply with the zoning bylaw.

**O’Mara** – Regarding the suspiciously close groundcover, the owner has until the time of submission of the as-built to decide the groundcover. To require an as built at this point is unusual. As far as meeting Planning Board approval for a 2<sup>nd</sup> dwelling, if they don’t have it and plan on turning it into a dwelling, they need to apply to the Planning Board but don’t need to apply when they build a garage with a studio above; it’s early to have that discussion.

**Botticelli** – She sees the pool house and main house, but her plans don’t have the garage.

**Allen** – The foundation is ½ inch from the property line; it seems they would want to know now before they build on the foundation.

**O’Mara** – There is something in the building bylaw that allows the builder to hand in an as built after the foundation; that protects against there being an issue; it would go from a variance to a special permit.

**Botticelli** – It is the surveyor’s or architect’s responsibility to verify groundcover, not the Building Department. Unfortunately, groundcover not verified until it’s too late.

**Heyer** – We think it’s a pushing of the envelope and goes to the attitude of asking forgiveness instead of permission.

**McCarthy** – The building was moved because of Massachusetts Endangered Species Act (MESA) requirements; that new location was submitted to the Historic District Commission (HDC). The question is if we overturn the Building Commissioner’s handling of this or if we agree with him.

**Heyer** – The garage was moved because of MESA and the cabana moved for reasons.

**Botticelli** – Asked when they got HDC approval.

**Heyer** – They went through the HDC 11/15/2019 for all of them.

**Murphy** – There were 2 issues, 1<sup>st</sup> the owner put foundations in without the benefit of a permit; he told the property owner they had to stop and obtain proper permits. When he came in, he was charged 4X the application fee; they probably paid \$24,000 over the initial \$8,000 fee. He doesn’t know why the attorney wants them fined after the fact. The 2<sup>nd</sup>-dwelling approval was obtained in the 1<sup>st</sup> instance. Planning Board looks at access only; he felt it wasn’t appropriate for him to stop the job for not going back to Planning Board for the new location. There were no access issues associated with the secondary dwelling.

**Botticelli** – Asked for clarity on the fines.

Discussion about how fines are determined and what the fines were.

**Mondani** – Asked when the foundations were put in and if they had HDC approval when they were put in.

**Botticelli** – There are photos dated July 13<sup>th</sup> showing the foundations and the permits were issued at the end of July; they were put in after receiving HDC approval.

**Allen** – Asked what has happened since July 21<sup>st</sup>.

**Murphy** – They are probably working on it.

**McCarthy** – The appellant wants the owner to comply with the zoning requirements. The permits were issued, so there are no red flags; it’s been through HDC. As far as we know, everything is compliant.

**Murphy** – Engineers aren’t going to locate buildings in the wrong location.

**Botticelli** – Confirmed that getting a Planning Board approval for the garage-apartment would have been a consent item.

**Snell** – Planning Board reviews a secondary dwelling or garage-apartment for access requirements and are not necessarily concerned about where it’s sited. Both of these were approved.

**Murphy** – The 2<sup>nd</sup> issue was Planning Board approval for the secondary dwelling; they now have that.

**Heyer** – We believe the pool house is masquerading as an inappropriate tertiary dwelling and still have concern about the building coverage ratio.

**Snell** – She’s not aware they have approval for a tertiary dwelling. That can be flagged with the Building Inspector taking the appropriate enforcement action.

**McCarthy** – They are on notice that they don’t have a permit for a tertiary dwelling. Asked if the pool house is a dwelling and it comes back to us, she wouldn’t be very flexible about it.

**Botticelli** – She’s curious about the Board of Health (BOH) since they count every room as a potential bedroom versus the septic capacity. These are all labeled as bedrooms on the plans.

**Mondani** – Asked if there’s a process for the Commissioner to stop them should things go awry.

**Murphy** – At the final inspection, we would not issue the Certificate of Occupancy until alterations are made.

**Allen** – Asked why wait for the final when it could be done at the rough inspection; you would know at that time where the bathrooms are.

**Murphy** – A pool house is allowed to have plumbing.

**Botticelli** – The drawings depict the pool house obviously as a dwelling; they either need to get tertiary dwelling approval or submit revised drawings eliminating bedroom and living room walls. She’d be curious about the BOH review regarding number of bedrooms versus the septic.

**McCarthy** – Thinks every board would have called that out the pool house with the bedrooms.

**Mondani** – The concern about the grade change, asked how that would be verified.

**McCarthy** – There is a grade bylaw but the issue with that bylaw is that it’s vague.

**Botticelli** – The question with the bylaw is at what time is the existing grade established.

**Cohen** – The determination on a prior property is that the existing grade is set at the time the building permit is applied for. If there are exiting structures, that sets the grade.

**Heyer** – She believes that the fill came in prior to the building permits when construction started.

Discussion about the retaining walls regarding the grading and the building permit.

**Mondani** – Confirmed that the owners of 12 Eat Fire Springs were notified of this hearing and chose not to attend. A lot of our questions could be answered by the owner.

**Snell** – We did not hear from the owner or their representative. Back to the tertiary dwelling, the stamped HDC-approved plans do not show bedrooms.

**McCarthy** – If after all of this they come back because they intruded into the setback, it will be the straw that broke the camels back as far as forgiveness.

**O’Mara** – Asked if the Esposito’s are direct abutters (yes) and that loss view has nothing to do with this.

**Heyer** – It’s a density issue with the encroachment into setback; her client doesn’t intend to prevent the project, just that it’s compliant.

**O’Mara** – It’s unusual to presume the bylaw is being broken without proof. He doesn’t recommend building within 6” of the setback; they usually end up coming to the ZBA and get no sympathy.

**McCarthy** – The starting work without permits has been addressed. We can’t manage their project during construction to prevent a violation. They have to follow the bylaw and meeting zoning requirements.

**Heyer** – Pointed out that there is caselaw that states they have to appeal the building permit within a certain time frame, they are barred from moving forward with that and are thus protecting their rights.

**Allen** – Because of their track record, she thinks the neighbor is doing them a favor by bringing it to everyone’s attention.

**McCarthy** – If there is another violation the neighbor sees, they can bring that to the Building Commissioner. If in the end they are not compliant with all their approvals, they have to deal with the consequences. At this point, we are aware and the Building Department has acted accordingly and the neighbor has protected their appeal rights. Asked for a motion.

Motion Uphold the Building Commissioner. **(made by: Botticelli) (seconded)**

Vote Carried 4-1//Mondani opposed

- |    |       |                     |                    |        |
|----|-------|---------------------|--------------------|--------|
| 3. | 13-22 | Brian & Lorri Ryder | 3.5 Mary Ann Drive | Wilson |
|----|-------|---------------------|--------------------|--------|
- Applicants are seeking Variance relief pursuant to Nantucket Zoning By-law Section 139-16C (1) (Intensity regulations-setback) in order to construct a 704 SF one-bedroom apartment on second floor of an existing personal storage building with a 2-bay garage space on the first floor. Locus is situated at 3.5 Mary Ann Drive, shown on Assessor’s Map 68 as Parcel 988 and as lot 786 upon Land Court Plan 16514-78. Evidence of owner’s title is registered on Certificate of Title No. 27496 with the Nantucket County District of the Land Court. The site is zoned Commercial Trade Entrepreneurial Craft (CTEC).

Voting	McCarthy, O’Mara, Allen, Poor, Mondani
Alternates	None
Recused	Botticelli
Documentation	File with associated plans, photos and required documentation
Representing	Michael Wilson, esq Brian & Lorri Ryder, owners
Public	None

Discussion (1:04) **Wilson** – Explained the request for the variance; had the egress stairs been built in 2010, it would be pre-existing, non-conforming. Ms. Bunting on Pine Tree would be the most impacted by the stairs.

**O’Mara** – Asked if all the abutters are in support of this. He doesn’t know where the writers of the letters in support live.

**McCarthy** – Mr. Ryder said the direct abutters to the left, right, and rear are in support of this. This would require 4 positive votes to pass. We need to make a finding; read the finding. She could agree since the building is conforming and the zoning changed and the housing is for employees

Motion **Motion to Approve.** (made by: Allen) (seconded)  
Vote Carried unanimously

4. 14-22 Montana Heaven, LLC 13 Arkansas Avenue Cohen  
Applicant is seeking Special Permit relief pursuant to Nantucket Zoning By-law Sections 139-30 and 139- 2 to install a residential swimming pool on a lot that is 20,180± SF with a single-family dwelling and a cottage with an attached garage. Locus is situated at 13 Arkansas Avenue, shown on Assessor’s Map 59.4 as Parcel 158 and is Lot 639 on Land Court Plan 3092-64. Evidence of owner’s title is registered on Certificate of Title No. I-992 at the Nantucket County District of the Land Court. The site is zoned Village Residential (VR).

Voting McCarthy, Botticelli, O’Mara, Poor, Mondani  
Alternates Allen (depart 1:45)  
Recused None  
Documentation File with associated plans, photos and required documentation  
Representing Steven Cohen, Cohen & Cohen Law P.C  
Public Alicia Ruggiero, 51 Arkansas Avenue  
Kerry McKenna, 22 Arkansas Avenue

Discussion (1:12) **Cohen** – The ZBA has seen a number of these, and his client is comfortable with the standard conditions. This has HDC approval. Regarding lighting, it has to be Dark-Skies compliant though safety lighting is required. This lot is surrounded by significant vegetation. Since no fence is shown on the plans, he assumes the pool has an auto-cover. This is a modest 4-bedroom lot.

**Botticelli** – It would have to be conditioned that lighting be shown on the plan; it is not in these plans.

**McCarthy** – Reviewed concerns indicated in the letters: lighting, noise, setback, filing complaints, vegetation.

**Cohen** – If the condition be through the driveway, that would be acceptable.

**Ruggiero** – Our area is densely populated with lots of townhouses; this pool would be the first on Arkansas Avenue. The construction of the house and ancillary structures has changed the look of the area. A big issue is where the water to fill the pool will come from; we are on wells here and feels it is pushing our resources. The design of the pool touches each corner so the sound from the filters will be audible. Also, there are no lighting structures in the area and this property is the only one with exterior lighting. The pool at Goose Pond has caused the neighbors much distress.

**O’Mara** – We could condition this that the pool be filled by from an off-site source.

**Botticelli** – If it meets requirements outlined in the bylaw, we have to approve it but we can condition it. We could condition repair top the road after construction. She doesn’t see that it touches the property lines. Pool equipment is 20’ off the property lines.

**McCarthy** – If there’s a Tristram’s Landing homeowners association, it could make rules banning pools. We can only deny a special permit if it doesn’t meet setback or groundcover requirements; this does meet those requirements. Reviewed the typical conditions ZBA attaches to pools in the Madaket area. We can require they use low-level pumps and mitigate the noise of the equipment. The plan submitted shows only the safety lighting inside the pool; the condition would limit lighting to that and as required by code.

**McKenna** – Explained how they maintain Arkansas Avenue itself. The neighborhood is very stable with 18 year-round residents, 15 seasonal April to November, and 11 timeshares; that leaves 11 which are in flux. This lot is currently on the market as a 3-bedroom while the rental add indicates 4-bedroom with room to sleep 12. The main concern is the disruption this activity would cause to the neighborhood and how it would change the feeling and tone of a stable neighborhood. Asked the board to continue to get a lighting plan, have them put in a fence whether or not it has an auto-cover and explain if the pool to be alarmed.

**Cohen** – The current owner is selling this with a pool permit. Asked for an approval with the discussed conditions to include the road.

**McCarthy** – We can either ask for a lighting plan or we can approve this without any exterior, landscape lighting.

**O’Mara** – Confirmed that, if this property came back later with a lighting plan, the abutters would be notified.

**Snell** – You could add language that any modification of the permit for lighting would require a hearing; that prevents them from coming in with a minor modification.

**Cohen** – Explained that the pool permit would be issued to the current owner, filed against the land, and run with the deed; it would be sold with the permit, which is good for 3 years. It would be up to the buyer to decide to use the permit.

**McCarthy** – Read the conditions to be attached to the permit.

Motion **Motion to Approve with Conditions A through J.** (made by: O’Mara) (seconded)  
Vote Carried unanimously

**IV. OTHER BUSINESS**

1. Snell – She will draft a letter thanking Mr. Toole for his service to be signed by all members. The Select Board will vote on his resignation next week then follow the selection process for replacing him.

**V. ADJOURNMENT**

Motion **Motion to Adjourn at 2:06 pm.** (made by: Botticelli) (seconded)

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