



Town of Dennis

685 Route 134, South Dennis, MA 02660 / Telephone: 508-394-8300 Fax: 508-394-8309

**568 Main Street Unit #E**

**ZBA Building Commissioner Appeal STAFF REVIEW – January 16, 2024**

**NOTE TO THE APPLICANT:** The staff review is prepared for the Board of Appeals and is provided to applicants to inform them of issues that have arisen during the review of the application. The hearing is based upon the plans originally filed – the plans that the public were able to review upon receiving notice.

<b>APPLICANT:</b>	Kantor Realty Trust, Susan J. Kantor Trustee C/O Moriarty, Bielan & Malloy Law, LLC
<b>PROJECT ADDRESS:</b>	568 Main Street. Unit E, West Dennis
<b>MAP AND LOT NUMBER:</b>	81-13
<b>APPLICANT ADDRESS:</b>	Kantor Realty Trust, 9 Hunter Lane, Canton, MA C/O Moriarty, Bielan & Malloy Law, LLC, One Adams Place, 859 Willard Street, #440, Quincy, MA, 02169
<b>CASE NUMBER:</b>	ZBAPP-023269-2023
<b>ZONING:</b>	R-40; 2/3 of property is in the AE Flood and 1/3 in 500-Year.
<b>HEARING DATE:</b>	November 27, 2023; continued to December 18, 2023; <b>continued to January 22, 2024</b>

<b>REQUEST</b>	That the applicant is not subject to Dennis Zoning Bylaw §2.3.3.6.a.i-v (Zoning Compliance for Accessory Structures) for moving a shed.
<b>PLOT PLAN</b>	Existing Conditions Plot Plan prepared for Susan Kantor by Moran Engineering, 941 Main Street, Harwich, MA dated 10/2/2023.

<b>PROPOSAL</b>	Appealing the Building Commissioner denial of a request to locate a non-conforming shed within a setback requiring a variance at 568 Main Street Unit E.
<b>PROJECT SUMMARY</b>	<ul style="list-style-type: none"> <li>• 568 Main Street Unit E is a 0.16-acre (6,925 sf) parcel of land created behind 568 Main Street with several other dwellings that appears to have been a cottage colony at one time and is accessed by an unnamed private unpaved road/driveway on the west side of the house.</li> <li>• The site plan labels the access as “Private Right of Way for 560 Rte 28 (no legal access for #568 Main Street)” on the west side of the property.</li> <li>• The site plan also shows a “10’ ROW to Beach” along the east side of the property running south to neighbors. <b>This is used as the access to this property.</b></li> <li>• Due to the extreme non-conforming nature of the property without any frontage on a real road, the front and rear of the property is disputed.             <ul style="list-style-type: none"> <li>○ The <b>legal</b> access to the house is via the <b>Right of Way on the east; not the RoW on the west of the property as previously stated in the staff report.</b></li> <li>○ Main Street is to the south;</li> <li>○ <b>Throughout Town many properties have multiple fronts and thus multiple sides with front yard setbacks, if they face on more than one Way. In this case, the private way to the west of the house, labelled as “Private Right of</b></li> </ul> </li> </ul>

**Way for 560 Rte 28” and the legal access on the East have apparently been determined by the Building Commissioner to both be front yards subject to front setback rules.**

- **It appears that cars could** cross the south of the property from the west and enter on the east. Property could be construed as a corner lot.
- The site plan shows the 8.2’ by 11.8’ shed is currently 12.5’ from the Private Way on the west and 11.8’ from the southern border of the property.
- A rinsing station, also known as an outdoor shower, appears to have been added in 2023 to the west side of the shed.
- Site plan shows the septic system is partly located in parking area.
- On September 18, 2023 the applicant re-applied for the existing shed. The Building Commissioner denied stating the shed required a variance as it is in the front setback and was “*designated abandoned with Conservation filing and no zoning compliance Certificate (shed) application has been made for a new shed or new shed location*”.
- In a follow-up request for enforcement signed by ZBA Chair:
  - *Shed was relocated from a non-conforming location to a more non-conforming location. Deck was replaced with a dry laid patio expanding the structural footprint in the front yard setback and expanded to be closer to the way shown on the attached plan. Patio is a structure under Section 5 Definitions: STRUCTURE An assembled combination of materials at a fixed location to give support or shelter, exclusive of boundary or retaining walls, ... and the like. The patio does not meet any of the tests for being exempt from setbacks and clearly provides support as illustrated on the landscape plan (attached) provided to the Conservation Commission.*
- In the Appeal the appellant makes certain unsubstantiated claims about what the Building Commissioner said **on site** about the location of the shed.
- The appellant claims they are not subject to 2.3.3.6.a.i because they are more than 75 feet from Main Street, from which the property derives its address.
- The appellant claims they are not subject to 2.3.3.6.a.v because the shed was pre-existing and was moved and not “erected”.
- At some point the shed was moved from near the water to a position next to the house. It was later repositioned again **in 2023** and added on to **with plumbing added for the outdoor shower**.
- The appellant withdrew an application to the ZBA for a new larger shed at the hearing in March 2023 that had been approved by Conservation.

Aerial photographs indicate that in:

- April 2016 the shed was on the west side of the home aligned in a N-S position
- A significant expansion of the bulkhead between April 2020 and March 2021.
- Between March 30 and September 19, 2021 additional hardscape was added to the northwest side of the house.
- By April 21, 2022 a pergola was built on the north side of the shed. The pergola appears to contain an outdoor kitchen.
- Between April 21 and September 2, 2021, the shed was moved south and turned 45 degrees in an east-west orientation.

- |  |   |
|--|---|
|  | <ul style="list-style-type: none"> <li>• Between Sept. 2021 and April 21, 2023, a stockade fence was constructed along the west and south sides of the property.</li> </ul> |
|--|---|

**TOWN DEPARTMENTS COMMENTS:**

- **PLANNING:**

- The site is constrained due to its extreme non-conformity and lack of clear frontage on a real road. However, this situation should make the property more subject to oversight rather than less rather than avoid permitting due to semantics.
- The appellant claims they are not subject to 2.3.3.6.a.i because they are more than 75 feet from Main Street, nor do they think they are subject to 2.3.3.6.a.v because the shed was pre-existing and was moved and not “erected”.
- The appellant does not seem to think they are subject to zoning code enforcement in any way as they have added to the shed with a shower and a patio and outdoor kitchen to the pergola. A stockade fence has been added to the property and an enclosed area between where the shed was and the house also seems to have appeared since the shed moved.
- The Building Commissioner has suggested to the appellant where the shed could legally go, directly to the south of the house in the parking area, **outside of the front setbacks**.
- **A Site Visit after a rain showed that some landscaping flowed off the property to the private access on the west.**
- **An attractive fence and arched gateway block access to the beach along the east Right of Way on the applicant’s property. Permanent structures are not allowed in a Right of Way and though it is accessible, it could deter neighbors with access rights from accessing the beach as it appears to be private property.**
- The appellant has created a nice space for themselves but the non-conforming site is constrained and the incremental development of the house and property is and must be subject to zoning code compliance.

- **ENGINEERING:**

- All completed sitework should be reviewed for compliance with the intent of the Stormwater By-Law. All runoff should be contained and infiltrated within the property boundary. Runoff should not flow to abutting properties, or the resource areas.
- Roof runoff from all structures should be directed to subsurface structures or stone drip trenches for infiltration.
- Any outdoor rinsing station or showers should be directed to infiltration areas, and not cause any runoff to flow to abutting properties.
- Adequate area for parking and vehicle maneuvering within property should be confirmed.
- The current status and description of the 10ft. ROW “to the beach” should be confirmed. If access is permitted, adequate means to access the beach over the ROW should be provided. The legal status of any development, improvements or structures in any current ROW should be verified.

- **Building:**

Accessory Structures, 2.3.3.6(a.i) Shall not be located forward of the front face of the principal structure whose front face is seventy-five (75) feet or less from the street line. 2.3.3.6(a.v) Shall not be erected without a Zoning Compliance Certificate from the Building Department. Definitions 5.(B) LOT FRONTAGE- Continuous portions of the street line over which automobiles have legal and physical access from the lot. STREET- A way which affords the principal means of access as defined in M.G.L. Ch.90 and 41, §81L. STREET LINE- A lot line abutting a street. YARD- That portion of the lot which is unoccupied by a structure except for fences, furniture, and other customary yard accessories. YARD, FRONT- A yard extending between any street line and the principal structure, and bounded by the sides of the lot.