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Town of Dennis
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568 Main Street Unit #E, West Dennis, MA

APPEAL OF A BUILDING COMMISSIONER'S DECISION

APPELLANT	Kantor Realty Trust, Susan J. Kantor Trustee C/O Moriarty, Bielan & Malloy Law, LLC
PROJECT ADDRESS:	568 Main Street. Unit E, West Dennis
MAP AND LOT NUMBER:	81-13
APPLICANT ADDRESS:	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
COMPLAINT	568 Main Street Unit #E Appeal of Building Commissioner: 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 into a front setback.
CASE NUMBER	ZBAPP-023269-2023
ZONING DISTRICT	R-40; 2/3 of property is in the AE Flood and 1/3 in 500-Year.
PLOT PLAN	Existing Conditions Plot Plan prepared for Susan Kantor by Moran Engineering, 941 Main Street, Harwich, MA dated 10/2/2023.
HEARING DATE:	November 27, 2023; continued to December 18, 2023; continued to January 22, 2024.

REGISTRY OF DEEDS REQUIRED INFORMATION			
Subject Property Address:		568 Main Street Unit E, West Dennis, MA	
Registry of Deeds Title Reference		Book: 32373	Page 108
or Certificate of Title #		And Land Ct Lot	And Plan #
Town Map #	81	Parcel	13

HEARING DATE	November 27, 2023
REQUEST	Appeal of Building Commissioner denial of request for cease and desist of construction of a garage at 332 Main Street based on lack of Notice for the Special Permit that allowed the construction.

PROJECT SUMMARY	<ul style="list-style-type: none"> 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. The site is constrained due to its being less than 20% the size of the minimum lot area (6,970 sf in a 40,000-sf zone), its non-conformity, located partly in a flood zone with wetlands and lack of clear frontage on an accepted road.
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- 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.
- The site plan also shows a “10’ ROW to Beach” along the east side of the property running south to neighbors. This is used as the access to this property and is also apparently access to the beach for others on the Right of Way.
- Due to the non-conforming nature of the property without any frontage on a real road, the applicant disputed the frontage of the property.
 - The legal access to the house is via the Right of Way on the east;
 - Main Street, from which the address is derived, is far to the south;
 - The legal access for several neighbors is a Right of Way directly to the west of the house;
 - 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 Way for 560 Rte 28” and the legal access on the East have been determined by the Building Commissioner to both be front yards subject to front setback rules.
- 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 to the west side of the shed when it was moved again in 2023.
- The Site Plan shows the septic system is partly located in parking area.
- The Applicant filed a series of applications with the Conservation Commission in 2022 and 2023 and eventually was permitted by them to construct a new larger 12’ by 16’ shed. However, the Conservation Commission has the final word on where things cannot go in their jurisdiction, not on where they can go outside of their jurisdiction.
- At some point the shed was moved from near the water to a position next to the house (see aerial picture chronology below). It was later repositioned in 2021 and then moved again in 2023 with an outdoor shower and enclosure added.
- In March 2023, the appellant withdrew an application to the ZBA for the new larger 12’ by 16’ shed, at the hearing, that had been approved by Conservation.
- On September 18, 2023 the applicant re-applied to move the existing the 8.2’ by 11.8’ shed. The Building Commissioner denied this application stating the shed required a variance as it would be 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*

	<p><i>setbacks and clearly provides support as illustrated on the landscape plan (attached) provided to the Conservation Commission.</i></p> <ul style="list-style-type: none"> • In the Appeal the appellant makes certain unsubstantiated claims about what the Building Commissioner said on site to their contractor 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”. <p><u>Aerial photographs indicate that in:</u></p> <ul style="list-style-type: none"> • 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. • Between Sept. 2021 and April 21, 2023, a stockade fence was constructed along the west and south sides of the property. • Based on the Existing Conditions Plot Plan dated 10/2/2023 the shed was moved again, closer to the property border.
FINDINGS	The decision of the Building Commissioner was consistent with the zoning bylaws and the Building Commissioner was correct to deny the application for a shed permit, the vote was to uphold that decision.
VOTE	The Board’s vote to DENY the Appeal and uphold the Building Commissioner was unanimous, 5-0-0: Peter Checkoway [Chair], James Kyrimes, Elisa Ridley, Aaron Ridley and Mark Carrick.

At a continued public hearing held on January 22, 2024 relative to an Appeal of a Building Commissioner’s Decision under the Dennis Zoning By-law, the Board of Appeals voted unanimously to **DENY THE APPEAL AND UPHOLD THE BUILDING COMMISSIONER** in determining that the Building Commissioner was correct in their denial of a permit for the moving of the shed into a front setback.

Details of the hearing and decision are on file in the Planning and Appeals Office at the Dennis Town Offices as File ZBAPP-023269-2023.

Appeal from this decision may be made pursuant to Massachusetts General Laws Chapter 40A, Section 17, within 20 days of filing with the Town Clerk. This Special Permit shall lapse if substantial use or construction has not commenced without good cause within one year from the date issued.

I certify that a copy of the original decision has been filed with the Town Clerk.


Peter Checkoway, Chair, Dennis Board of Appeals

DATE: February 27, 2024
I certify that this decision was filed on February 6, 2024 and on February 23, 2024 within 20 days, the Town Clerk received a Notice of Appeal