ZBA

PACKET

THURSDAY

FEBRUARY 11, 2021

1pm *via* ZOOM WEBINAR[1]

REGISTRATION LINK:
https://zoom.us/webinar/register/WN_gbIEEE_CR4Okx2w0QGZPfw

To view the LIVE broadcast of the meeting, see *YouTube Link* ***at***
https://youtu.be/4vNxeodR11g

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[1] Participation in Public Comment will be available through Zoom Webinar. You must register in advance in order to participate. Use the link above to register for Zoom participation. Contact eantonietti@nantucket-ma.gov with any questions.*

TOWN OF NANTUCKET
BOARD OF APPEALS
NANTUCKET, MA 02554

Agenda
(Subject to Change)
Thursday, February 11, 2021
1:00 PM
www.nantucket-ma.gov

*****Participation in Public Comment will be available through Zoom Webinar. You must register in advance in order to participate. Use the link below to register for Zoom participation. Contact **eantonietti@nantucket-ma.gov** with any questions.*

1

ZOOM WEBINAR REGISTRATION LINK:
https://zoom.us/webinar/register/WN_gbIEEE_CR4Okx2w0QGZPfw

To view the LIVE broadcast of the meeting, see ***YouTube Link*** *at*
https://youtu.be/4vNxeodR11g

I. CALL TO ORDER:

II. APPROVAL OF THE AGENDA:

III. APPROVAL OF THE MINUTES:

Pages 5 - 7

- January 14, 2021

IV. OLD BUSINESS (CONTINUED PUBLIC HEARINGS AND VOTES MAY TAKEN):

- 11-20 Peter J. Mackay & Alison Mackay and David P. Mackay & Anne M. Phaneuf, Tr., Mackay/Phaneuf Family Trust 21 & 25 Monohansett Road Alger
  Action Deadline May 13, 2021 **CONTINUED TO MAY 13, 2021**

2 Fairgrounds Road Nantucket Massachusetts 02554
508-325-7587 telephone 508-228-7298 facsimile

V. NEW BUSINESS (INITIAL PUBLIC HEARINGS AND VOTES MAY BE TAKEN):

- 02-21 ACK*NOW 14 Mill Street Pickering-Cook
  Action Deadline April 7, 2021

Pages 12 - 154

Appellants bring an appeal, pursuant to M.G.L. c.40A, Sections 8 & 15 and Zoning By-law Sections 139-29.E and 139-31, of a determination by the Building Commissioner that the use of 14 New Mill Street exclusively as a short-term rental ("STR") business is not a commercial use prohibited in the residential zone in which it is located. Appellant requests that the Zoning Board of Appeals overturn the Commissioner's determination with respect to the property and further that zoning enforcement action be taken by issuing an order to the owner to cease and desist using the property as an STR. The Locus is situated at 14 New Mill Street, is shown on Assessor's Map 55.4.4 as Parcel 133, and as Lot A-1 on Plan Book 14, Page 17. Evidence of title to 14 New Mill Street, LLC is recorded in Book 1559, Page 133 on file at the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).

- 03-21 Damon S. Cartelli & Debra A. Cartelli 35 Washington St. Beaudette
  Action Deadline May 12, 2021

Pages 155 - END

Applicant is requesting Modification of prior relief by Variance granted in File No. 73-94 (recorded at Book 463, Page 206) pursuant to Zoning By-law Section 139-32 in order to validate the premises' insufficient frontage and a westerly lot line setback intrusion brought about by an interior lot line reconfiguration with abutting property. Specifically, Applicant requests that a Condition prohibiting more than one dwelling be eliminated to allow the applicant to construct a secondary dwelling upon the premises. Neither nonconformity will be affected by the proposed modification. The Locus is situated at 35 Washington Street, is shown on Assessor's Map 42.3.2 as Parcel 142, and as Lot 4 on Plan File 46-U. Evidence of title is recorded in Book 1635, Page 1329 on file at the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).

2

VI. OTHER BUSINESS: (Votes may be taken)

VII. ADJOURNMENT (VOTE WILL BE TAKEN)

MINUTES

ZONING BOARD OF APPEALS

2 Fairgrounds Road
Nantucket, Massachusetts 02554
www.nantucket-ma.gov

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

~~ MINUTES ~~

Thursday, January 14, 2021

This meeting was held via remote participation using ZOOM and YouTube,
Pursuant to Governor Baker's March 12, 2020 Order Regarding Open Meeting Law

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

Staff in attendance:	Eleanor Antonietti, Zoning Administrator; T. Norton, Town Minutes Taker
Attending Members:	McCarthy, Botticelli, O'Mara, Koseatac, Poor, Mondani
Absent:	Toole, Thayer
Late Arrivals:	Botticelli, 1:05 p.m.
Early Departures:	Botticelli, 1:34 p.m.

Agenda adopted by unanimous consent

Motion	**Motion to Approve as drafted.** (made by: O'Mara) (seconded)
Roll-call vote	Carried 5-0//Botticelli, O'Mara, Koseatac, Poor, and Mondani-aye

I. APPROVAL OF MINUTES

1. December 10, 2020

Motion	**Motion to Approve as drafted.** (made by: Mondani) (seconded)
Roll-call vote	Carried 5-0//McCarthy, O'Mara, Koseatac, Poor, and Mondani-aye

II. OLD BUSINESS

1. 051-03 David S. Gesner & Julie A. Gesner 6 Fox Grape Lane Beaudette

The Applicant seeks to ratify a previous determination that a proposed modification to the Comprehensive Permit, as amended, and the plans approved therewith, may be considered insubstantial pursuant to 760 CMR 56.05 (11)(a)(b), and as such, may be authorized and ratified by the Zoning Board of Appeals. Specifically, applicants seek to confirm that the bedroom count upon Lot 8 is three and the bedroom count upon Lot 9 is four. Furthermore, and to the extent necessary, Applicant requests the assent of the Zoning Board of Appeals to amend the Declaration of Restrictions and Easements, so as to effectuate and memorialize the foregoing request. The Locus is situated in the Beach Plum Village 40B, is known as 6 Fox Grape Lane, is shown on Assessor's Map 67 as Parcel 808, and as Lot 9 upon Plan No 2006-61. Evidence of owner's title is recorded in Book 1611, Page 116 on file at the Nantucket Registry of Deeds. The site is located in the Limited Use General Two (LUG-2) zone.

Voting	McCarthy, Botticelli, O'Mara, Koseatac, Mondani
Alternates	Poor
Recused	None
Documentation	File with associated plans, photos and required documentation
Representing	Richard Beaudette, Vaughn, Dale, Hunter, & Beaudette P.C. Julie A Gesner, co-owner
Public	Reade
Discussion (1:11)	**Beaudette** – He is representing his client, the former owner and seller, to clean up the record for the Gesners. Explained the situation leading to this request. Needs confirmation of the change to the Comprehensive Permit. **Antonietti** – She did a lot of research through the minutes and past records; the prior administrator had the habit of taking hand written notes and eventually transcribing but the typed transcript never made it to the Town Clerk and have not been located. Two of the current board members, Mr. O'Mara and Mr. Koseatac, were on the board at that time. **Reade** – Ms. Antonietti directed him to letters back in 2006 which jogged his memory; as he recalls, there were a number of issues raised at that time, but this was non-controversial. **McCarthy** – She agrees that based upon having the building permits and getting the Certificates of Occupancy, and a later model swap, she knows it's a practice that has happened. Her only concern would be a possible change to the bedroom count. **Beaudette** – He'd like the board to rule the change as insubstantial and that no relief is required, or something similar. He reached out to the attorney for Lot 8, who agreed to sign the paperwork once ZBA makes a ruling. **Mondani** – His only concern would be the neighbor who owns Lot 8 wanting to add a bedroom.

PROPOSED

Discussion about the owners of Lot 8 not being able to get a fourth bedroom because of the cap on bedrooms in the Comprehensive Permit.

Antonietti – In 2017, Attorney Marianne Hanley came before the ZBA for a bedroom swap between Lots 2 and 34; that was properly memorialized.

Koseatac – He'd rather "bless the mess" and move on.

Botticelli – Agrees it is a paperwork error.

O'Mara – Also agrees.

Antonietti – She will create a narrative letter for filing with the Town Clerk and to go into the Building Department files; Ms. McCarthy would sign the letter. She will also have to sign the assent to amend the Declaration of Restrictions and Easements.

Motion	**Motion to Ratify prior 2006 determination that a proposed swap of house models and corresponding bedroom counts between Lot 8 (9 Wood Lily) and Lot 9 (6 Fox Grape) may be considered an insubstantial modification to the Comprehensive Permit because it will not change the overall allowed bedroom count.** (made by: Botticelli) (seconded)
Roll-call vote	Carried 5-0//McCarthy, Botticelli, O'Mara, Koseatac, and Mondani-aye
Motion	**Motion to Authorize the Chair to sign the assent to the amendment of "Exhibit A" of the Declaration of Restrictions and Easements, so as to effectuate and memorialize the change in the number of bedrooms for Lot 8 to 3 and the number of bedrooms for Lot 9 to 4.** (made by: Botticelli) (seconded)
Roll-call vote	Carried 5-0//McCarthy, Botticelli, O'Mara, Koseatac, and Mondani-aye

2. 11-20 Peter J. Mackay & Alison Mackay and David P. Mackay & Anne M. Phaneuf, Tr., Mackay/Phaneuf Family Trust
CONTINUED TO MAY 13, 2021 21 & 25 Monohansett Road Alger

III. NEW BUSINESS

1. 01-21 Michael Metz 16 Western Avenue Reade

Applicant seeks relief by Special Permit pursuant to Zoning By-law Sections 139-30.A and139-33.A to alter, replace, and vertically extend a pre-existing nonconforming dwelling and accessory garage structure. Applicant proposes to relocate the detached garage to be attached to the house, thus decreasing the existing front yard encroachment. Further alterations are proposed to the dwelling. The structures are currently sited within the front and side yard lot lines. The altered structures would maintain encroachments but would not get closer to the lot lines than the existing structures or otherwise increase the nonconformities. The Locus is split between the R-20 and the LUG-2 zoning districts. The lot has a limited available building envelop due to shape, zoning setbacks, soil conditions, wetlands with associate buffer zones, and split zoning. The Locus is situated at 16 Western Avenue, is shown on Assessor's Map 87 as Parcel 72, and as Lot 3 upon Land Court Plan 8256-C. Evidence of owner's title is registered on Certificate of Title No. 22820 at the Nantucket County District of the Land Court. The site is zoned Residential 20 (R-20) and Limited Use General 2 (LUG-2).

Voting	McCarthy, O'Mara, Koseatac, Poor, Mondani
Alternates	None
Recused	Botticelli
Documentation	File with associated plans, photos, correspondence, architectural design plans, and required documentation
Representing	Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP Arthur Gasbarro, Nantucket Surveyors
Public	D. Maddalone, 14 Western Avenue
Discussion (1:35)	**Reade** – Explained the situation leading to this request.

McCarthy – She's having trouble visualizing the enclosed portion of the existing porch.

Gasbarro – Currently it is a Farmer's porch on 3 sides; it will be enclosed only to the dashed line.

Koseatac – Asked when the work will be done. Construction in the summer would complicate traffic down there.

Reade – His client is the contract purchaser and has no concrete plans for starting work.

Poor – His only concern is we don't have existing elevations and proposed expansion in this packet. Asked why.

Reade – The elevations had been undergoing the Historic District Commission (HDC) process, and we didn't have final plans until now.

McCarthy – The direct neighbor to the east is concerned the new addition will look right into their bathroom.

Reade – He doesn't know where the neighbor's bathroom is; currently there is a substantial and high hedge between the properties that would be maintained.

Gasbarro – Reviewed the architectural plans.

McCarthy – We can condition the decision to address screening.

Poor – His other concern is the increase in groundcover; the upper portion stands out over the porch; wants to know that groundcover is okay.

Antonietti – They have plenty of groundcover; it's called out in the Staff Report.

Reade – Groundcover of the proposed has been calculated to be 1,777sf.

Discussion about the east elevation which faces the neighbor who wrote the letter.

Maddalone – We are the abutters to the east. We support the renovation, but our one concern is the increased mass of the garage – doubles in height, being in view of our bathroom window, and is within 7 feet of our privet.

PROPOSED

McCarthy – It is unfortunate that the Maddalone's put a skylight in a roof canted toward the neighbors; they do have the right to renovate their structure. We can condition the screening to be maintained and replaced if necessary.
Antonietti – Concerned about imposing a construction moratorium condition in residential areas; we do it for denser areas such as ROH and R-1.
O'Mara – Suggested construction take place between Labor Day and June 15th.
Poor – His concern is parking on Western Avenue if construction is in the summer.
McCarthy – Asked if in the past we've asked construction crews to park at public lots and car-pool to the site.
Antonietti – The ZBA did that in 'Sconset, which is very dense.
Koseatac – He agrees with Mr. O'Mara about the construction dates. The beach parking lot in the summer is packed.
McCarthy – Ms. Maddalone said they did extensive renovations; asked if there were complaints regarding construction parking from the neighbors while that work was being done.
Maddalone – No; we talked to our neighbors before work was done and the largest amount of work took place in the winter.
McCarthy – She trusts Mr. Reade's clients to be good neighbors regarding parking of construction vehicles.
Poor – He would like to see the HDC-approved drawings included in the file.
O'Mara – It doesn't appear we will have any restrictions. Asked if Mr. Reade would be willing to provide his phone number to the neighbors so they have someone to call if an issue comes up.
Antonietti – They can call me.

Motion	**Motion to Grant the Relief as requested with the appropriate screening of the garage to be maintained and/or disturbed area replaced.** (made by: Mondani) (seconded)
Roll-call vote	Carried 5-0//McCarthy, O'Mara, Koseatac, Poor, and Mondani-aye

IV. OTHER BUSINESS

1. O'Mara – Asked for a moment of silence for former ZBA administrator Paul Jensen.
2. Antonietti – The Planning Board meeting to discuss zoning articles has been moved. Suggested Board members sign up for alerts for Planning Board meetings.

V. ADJOURNMENT

Motion	**Motion to Adjourn and 2:15 p.m.** (made by: Koseatac) (seconded)
Roll-call vote	Carried 5-0//McCarthy, O'Mara, Koseatac, Poor, and Mondani-aye

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

1. Draft ZBA minutes for December 10, 2020
2. Annual Town Meeting Zoning Warrant Articles

Submitted by:
Terry L. Norton

PROPOSED

OLD

BUSINESS

Peter J. Mackay & Alison Mackay
and
David P. Mackay & Anne M. Phaneuf, Tr.,
Mackay/Phaneuf Family Trust

21 & 25 MONOHANSETT RD.

FILE NO. 11-20

SPECIAL PERMIT

CONTINUED TO 5/13/2021

Print Form

NANTUCKET
TOWN CLERK

2020 DEC -7 AM 10: 22

TOWN OF NANTUCKET
BOARD OF APPEALS
NANTUCKET, MA 02554

File No. 11 -20 Map 27 Parcel 31

This agreement to extend the time limit for the Board of Appeals to make a decision, hold a public hearing, or to take other action concerning the application of:

Peter J. Mackay et al, Tr. of Mackay/Phaneuf Family Trust

Pursuant to the provisions of the Acts of 1987, Chapter 498, amending the State Zoning Act, Chapter 40A of the Massachusetts General Laws, Applicant(s)/Petitioner(s) and the Zoning Board of Appeals hereby agree to extend the time limit

- ○ For a public hearing on the application
- ● For a written decision
- ○ For other action _____

Such application is:

- ○ An appeal from the decision of any administrative official
- ● A petition for a special permit
- ○ A petition for a variance
- ○ An extension
- ○ A modification

The new time limit shall be midnight on May 13, 2021, which is not earlier than a time limit set by statute or bylaw.

The Applicant (s), attorney, or agent for the Applicant represented to be duly authorized to act in this matter for the applicant, in executing this agreement waives any rights under the Nantucket Zoning Bylaw and the State Zoning Act, as amended, to the extent, but only to the extent, inconsistent with this agreement.

Sarah F. Alger, Atty.
For Applicant (s)

Eleanor W. Antonietti, Zoning Administrator
For Zoning Board of Appeals

December 4, 2020
Effective Date of Agreement

Town Clerk Stamp:

2 Fairgrounds Road Nantucket Massachusetts 02554
508-228-7215 telephone 508-228-7298 facsimile

NEW

BUSINESS

ACK*Now

ON BEHALF OF:

- MARK & ROSANNE WELSHIMER – 3 NEW MILL ST.
- JANET & KEITH LINDGREN – 4 NEW MILL ST.
- ESTA LEE & HARRIS STONE – 9 NEW MILL ST.
- JOHN KILMARTIN, III – 11 NEW MILL ST.
- JOHN TRISTRAM & BEVERLY DAMMIN – 12 NEW MILL ST.

14 NEW MILL ST.

FILE NO. 02-21

APPEAL OF BLDG. COMMISSIONER

ANDERSON
KREIGER

NANTUCKET
TOWN CLERK
2020 DEC 31 PM 1:12

2020 DEC 30 PM 3:02
NANTUCKET
TOWN CLERK

NINA PICKERING-COOK
npickeringcook@andersonkreiger.com
T: 617.621.6536
F: 617.621.6636

December 30, 2020

Nantucket Planning and Land Use Services
c/o Eleanor W. Antonietti
2 Fairgrounds Road
Nantucket, MA 02554

Re: Appeal of Building Commissioner's Zoning Enforcement Decision of December 1, 2020 at 14 New Mill Street

Dear Chair McCarthy and Members of the Board:

I represent the local advocacy group ACK*Now and the following property owners:

- Mark and Rosanne Welshimer, 3 New Mill Street;
- Janet and Keith Lindgren, 4 New Mill Street;
- Esta Lee and Harris Stone 9 New Mill Street;
- John Kilmartin III, 11 New Mill Street; and
- J. Tristam and Beverly Dammin, 12 New Mill Street.

By letter dated December 1, 2020, Nantucket Building Commissioner Paul Murphy declined my clients' request to find that use of the property located at 14 New Mill Street (the "Property") exclusively as a short-term rental ("STR") business was a "commercial use" prohibited in the residential zone in which it is located. My clients hereby appeal the Building Inspector's refusal to enforce a zoning violation at the Property.

For the reasons set forth in our Statement of Facts and Law and Requested Relief (**Addendum B**) and supported by our addenda, my clients' request that the Nantucket Zoning Board of Appeals overturn the Commissioner Murphy's determination with respect to the Property, and order the Copley Group to cease and desist using the Property as an STR.

I have enclosed the following in support of my clients' application:

1. ZBA application form for appeal of Building Commissioner's determination;

2. Locus plan from the Nantucket Tax Assessor;

3. Certified abutters list and accompanying mailing labels;
4. Written Statement of Agency;
5. Check in the amount of $450;
6. Copy of Commissioner Murphy's December 1, 2020 Enforcement Denial (Addendum A);
7. Requested Relief and Statement of Facts and Law (Addendum B);
8. Copy of November 12, 2020 Enforcement Request and Accompanying Memorandum (Addendum C);
9. Copies of relevant sections of the Nantucket Zoning Code (Addendum D);
10. Copy of Use Table from Nantucket Zoning Code (Addendum E);
11. 14 New Mill Street Appellant – Abutters Map (Addendum F).

Best regards,

Nina Pickering-Cook

cc: Clients

Attachment 1

NANTUCKET
TOWN CLERK

2020 DEC 31 PM 1:12

TOWN OF NANTUCKET
BOARD OF APPEALS
NANTUCKET, MA 02554

Zoning Board of Appeals
DEC 31 2020
RECEIVED

APPLICATION

Fee: $450.00 **File No.** 02-21

Owner's name(s): 14 New Mill Street, LLC

Mailing address: 896 Beacon Street, Boston, MA 02215

Phone Number: (508) 901-9877 E-Mail:

Applicant's name(s): ACK*NOW

Mailing Address: PO Box 569, Nantucket, MA 02554

Phone Number: (508) 228-7500 E-Mail: npickeringcook@andersonkreiger.com

Locus Address: 14 New Mill Street Assessor's Map/Parcel: 55.4.4 / 72

Land Court Plan/Plan Book & Page/Plan File No.: Book 01559 Page 0133

Deed Reference/Certificate of Title: 11161 Zoning District: ROH

Uses on Lot- Commercial: Yes (describe) transient residential
Residential: Number of dwellings 1 Duplex _____ Apartments _____

Date of Structure(s): all pre-date 7/72

Building Permit Numbers: n/a

Previous Zoning Board Application Numbers: n/a

State below or attach a separate addendum of specific special permits or variance relief applying for:

See **Addendum B**

I certify that the information contained herein is substantially complete and true to the best of my knowledge, under the pains and penalties of perjury.

SIGNATURE:_____ Owner*

SIGNATURE:_____ Applicant/Attorney/Agent*

*If an Agent is representing the Owner or the Applicant, please provide a signed proof of agency.

OFFICE USE ONLY

Application received on:__/__/__ By:_____ Complete:____ Need Copies:_____
Filed with Town Clerk:_/_/_ Planning Board:_/_/_ Building Dept.:_/_/_ By:___
Fee deposited with Town Treasurer:_/_/_ By:___ Waiver requested:____
Granted:__/__/__ Hearing notice posted with Town Clerk:_/_/__ Mailed:__/__/__
I&M__/__/__ &__/__/__ Hearing(s) held on:__/__/__ Opened on :__/__/__
Continued to:__/__/__ Withdrawn:__/__/__ Decision Due By:__/__/__
Made:__/__/__ Filed w/Town Clerk:__/__/__ Mailed:__/__/__

Attachment 2

14 new Mill Street Assessor Map

Property Information

Property ID	55.4.4 72
Location	14 NEW MILL ST
Owner	14 NEW MILL STREET LLC

MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

Town and County of Nantucket, MA makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 11/13/2018
Data updated 11/19/2018

Attachment 3

Town of Nantucket

Zoning Board of Appeals

LIST OF PARTIES IN INTEREST IN THE MATTER OF THE PETITION OF:

PROPERTY OWNER..... 14 New Mill Street, LLC

MAILING ADDRESS..... 896 Beacon Street, Boston , MA 02215

PROPERTY LOCATION..... 14 New Mill Street

ASSESSOR MAP/PARCEL..... 55.4.4 / 72

APPLICANT..... Lily Ricci, Anderson & Kreiger, LLC 50 Milk Street, Boston MA 02109, on behalf of ACK*NOW, 28B Easy Street, Nantucket, MA 02554

SEE ATTACHED PAGES

I certify that the foregoing is a list of persons who are owners of abutting property, owners of land directly opposite on any public or private street or way; and abutters of the abutters and all other land owners within 300 feet of the property line of owner's property, all as they appear on the most recent applicable tax list (M.G.L. c. 40A, Section 11 Zoning Code Chapter 40A Section 139-2

Digitally signed by Rob Ranney
DN: cn=Rob Ranney, o=Town of Nantucket, ou=Assessor's Office, email=rranney@nantucket-ma.gov, c=US
Date: 2020.12.29 09:50:25 -05'00'

12-29-2020

DATE

ASSESSOR'S OFFICE
Town of Nantucket

Abutters Listing

MBLU	Lot	Lot Cut	Owner Full Name	Co-Owner Full Name	Address Line 1	City	State	Zip	Location
4233	32		BAILEY SAMUEL JR & JANET G		2 BRIDGEWATER RD	FARMINGTON	CT	06032	11 MILL ST
4233	33	1	LINDGREN ANN M & ROBERT K		5315 SUNSET LN	CHEVY CHASE	MD	20815	4 NEW MILL ST
4233	33	2	FISHTALES LLC		181 LLYOD ROAD	SAUNDERSTOWN	RI	02874	8 NEW MILL ST
4233	33	3	CARTER DEBORAH M		2 NEW MILL ST	NANTUCKET	MA	02554	2 NEW MILL ST
4233	33	4	ROTH DOUGLAS C TRST	ROTH FAMILY NOM TRUST	PO BOX 406	NEW HARTFORD	CT	06057	6 NEW MILL ST
4233	34		GULBRANDSEN PEDER		18 MILK ST	NANTUCKET	MA	02554	18 MILK ST
4233	36		LEVINE ARTHUR E TR ETAL		335 N MAPLE DRIVE STE 240	BEVERLY HILLS	CA	90210	22 MILK ST
4233	37		LEICHTMAN LAUREN B & LEVINE ARTHUR E TR		349 NORTH MAPLE DR # 300	BEVERLY HILLS	CA	90210	26 MILK ST
4233	82		FOWLKES GREGORY G & ANNABELLE B		155 EAST 72ND ST APT 7-8 B	NEW YORK	NY	10021	5 NEW DOLLAR LN
4233	84		HAMPTON S LYNCH JR TRST	C/O BBH	140 BROADWAY	NEW YORK	NY	10005	11 MILK ST
4233	85		BLOUNT SUSAN		1511 WOODLAND BLVD	AUSTIN	TX	78703	15 MILK ST
4233	86	1	COHEN STEVEN L TR	17 MILK STREET TRUST	PO BOX 786	NANTUCKET	MA	02554	17 MILK ST
4233	87		HADDON HEATHER VANCE TR		24 FAIR ST	NANTUCKET	MA	02554	21 MILK ST
4233	190		WELSHIMER MARK J & ROSANNE M		34 SUNNY BROOK RD	BRONXVILLE	NY	10708	3 NEW MILL ST
5544	5		JACKSON THOMAS J		84 RINGS END RD	DARIEN	CT	06820	6 PROSPECT ST
5544	6		8 PROSPECT LLC		216 RANDOLPH AVENUE	MILTON	MA	02186	8 PROSPECT ST
5544	7		ROSEVILLE LLC		3 EXECUTIVE PARK DR	BEDFORD	NH	03110	10 PROSPECT ST
5544	7	1	ZIRILLI LAUREN		476 BEACON STREET # 2	BOSTON	MA	02115	10R PROSPECT ST
5544	8		SCHAEFER LOUISA H		PO BOX 412	BROOKLANDVILLE	MD	21022	5 NEW MILL ST
5544	9		OMALLEY SUSAN TR	S OMALLEY NOMINEE TRUST	2901 BROWNELL AVE	SULLIVANS ISLAND	SC	29482	10 NEW MILL ST
5544	12		GIFFORD WHITNEY A TR	15 MILL ST NOM TRUST	C/O 155 MAIN STREET	DUNSTABLE	MA	01827	15 MILL ST
5544	13		GIFFORD WHITNEY A TR	15 MILL ST NOM TRUST	C/O 155 MAIN STREET	DUNSTABLE	MA	01827	13 MILL ST
5544	33		STRAIN ANNE P TRST ETAL		8 PARK AVENUE	RED HOOK	NY	12571	16 MT VERNON ST
5544	41		ALL NINES LLC		9 UNION PARK # 1	BOSTON	MA	02118	9 PROSPECT ST
5544	42		NEIER ARYEH & YVETTE		3 SHERIDAN SQ 15E	NEW YORK	NY	10014	11 PROSPECT ST
5544	42	1	POWELL NEELY W		1445 GREENLEAF RD STE A	CHARLESTON	SC	29405	1 JOY ST
5544	43		GNUECHTEL MICHAEL & PHYLLIS		310 WESLEY DR	KERRVILLE	TX	78028	12 PROSPECT ST
5544	44		RIESENBACH JAMES E & DEBORAH S		1401 SPRUCE ST APT 1202	PHILADELPHIA	PA	19102	7 NEW MILL ST
5544	45		DAMMIN JOHN T C & BEVERLY H TRS	DAMMIN FAMILY TRUST	146 MT VERNON STREET	BOSTON	MA	02108	12 NEW MILL ST
5544	46		STRANGE MERRILL PARRISH &	PHILIP C	P O BOX 248	GORDONSVILLE	VA	22942	19 A MILL ST
5544	46	1	STANGE MERRILL PARRISH ETAL		PO BOX 248	GORDONSVILLE	VA	22942	19 MILL ST
5544	47		SEVENTEEN MILL STREET LLC		25 WEST 94TH STREET	NEW YORK	NY	10025	17 MILL ST
5544	48		NANTUCKET ISLANDS LAND BANK		22 BROAD STREET	NANTUCKET	MA	02554	14 MILL ST
5544	49		NANTUCKET ISLANDS LAND BANK		22 BROAD STREET	NANTUCKET	MA	02554	12 MILL ST
5544	68		SZWAJKOWSKI MICHAEL C & COURTNEY MILLER		291 FOREST AVE	RYE	NY	10580	3 JOY ST
5544	68	1	5 JOY STREET LLC		17 BRUSH ISLAND ROAD	DARIEN	CT	06820	5 JOY ST
5544	69		4 JOY STREET REALTY TRUST		4A JOY ST	NANTUCKET	MA	02554	4 JOY ST
5544	71		STONE HARRIS E & ESTA LEE F		9 NEW MILL ST	NANTUCKET	MA	02554	9 NEW MILL ST
5544	72		14 NEW MILL STREET LLC		896 BEACON STREET	BOSTON	MA	02215	14 NEW MILL ST
5544	73		DIVENERE ANNE G TRUSTEE	DIVENERE NOMINEE TRUST	75 MARSH HEN LANE	PAWLEYS ISLAND	SC	29585	21 MILL ST
5544	74		MIKLOS ROBERT J & MARY F		431 KING STREET	HANOVER	MA	02339	16 PROSPECT ST
5544	75		PACKNPINE LLC	C/O ROBBINS & ASSOCIATES LLC	180 N STETSON AVE SUITE 2550	CHICAGO	IL	60601	18 MILL ST
5544	76		ACKSHACK LP		PO BOX 421	SARATOGA SPRINGS	NY	12866	16 MILL ST
5544	77		MUELLER NANTUCKET ASSCOCIATES LLC		50 TAFT AVENUE	PROVIDENCE	RI	02906	34 PROSPECT ST
5544	86		CRAIG CHRISTOPHER A		6 JOY ST	NANTUCKET	MA	02554	6 JOY ST
5544	87		KILMARTIN JOHN D III -10 & 15 TRST	JDK III QUALIFIED PER RESD TRUST	73 CONGDON STREET	PROVIDENCE	RI	02906	11 NEW MILL ST
5544	87	2	KILMARTIN JOHN D III TR		73 CONGDON STREET	PROVIDENCE	RI	02906	13 NEW MILL ST
5544	87	1	KILMARTIN GLORIA TRST	GK QUALIFIED PERS RESID TRUST	73 CONGDON STREET	PROVIDENCE	RI	02906	15 NEW MILL ST
5544	88		CURTIS SUSANNE S TRST		21 BRIAR CLIFF DR	WILBRAHAM	MA	01095	17 PROSPECT ST
5544	89		MARLETTE GEORGE L	C/O CALENE LISA	21 PROSPECT ST	NANTUCKET	MA	02554	21 PROSPECT ST
5544	89	1	CALENE LISA		21 PROSPECT ST	NANTUCKET	MA	02554	19 PROSPECT ST
5544	90		COTE J E & DEBRA L		2 CRESCENT MEADOW LANE	GEORGETOWN	MA	01833	23 PROSPECT ST
5544	91		MULCAHY MATHEW T		25 PROSPECT ST	NANTUCKET	MA	02554	25 PROSPECT ST
5544	92		WOODMAN NATHAN & CHRISTINE		9 SHEPARD MEMORIAL DRIVE	ESSEX	MA	01929	26 PROSPECT ST
5544	93		STOJAK EDWARD A TRST ETAL		PO BOX 1213	NANTUCKET	MA	02554	27 PROSPECT ST
5544	94		WYANT DOMINIQUE H JR & MARTHA T		445 GLENCASTLE DRIVE	ATLANTA	GA	30327	8 MILL HILL LN
5544	95		MANUS PETER & DEBORAH		36 CEDAR LANE WAY	BOSTON	MA	02108	28 MILL ST
5544	96		ANDERSON DEBORAH		P O BOX 1018	NANTUCKET	MA	02554	27 MILL ST
5544	96	1	COHANE JEANNE CIRILLO TR	COHANE JEANNE CIRILLO TRUST	9043 SOMERSET BAY LN # 401	VERO BEACH	FL	32963	18 NEW MILL ST
5544	96	2	NEW MILL LLC		47 CHESTNUT ST	BOSTON	MA	02108	16 NEW MILL ST
5544	97	1	CHATTMAN DAVID & ADAM ALEXANDRA		135 CLARENDON ST #5W	BOSTON	MA	02116	26 MILL ST
5544	97		NANTUCKET 24 MILL STREET LLC		24 MILL ST	NANTUCKET	MA	02554	24 MILL ST
Count:	**62**								

Attachment 4

ANDERSON
KREIGER

MEMORANDUM

To: Nantucket Zoning Board of Appeals

From: Nina Pickering-Cook and Lily Ricci
ANDERSON & KREIGER LLP

Re: Statement of Agency

Date: December 30, 2020

This office represents Mark and Rosanne Welshimer of 3 New Mill Street, Janet and Keith Lindgren of 4 New Mill Street, Esta Lee and Harris Stone of 9 New Mill Street, John Kilmartin III of 11 New Mill Street and J. Tristram and Beverly Dammin of 12 New Mill Street and ACK*Now of 28B Easy Street, all of Nantucket (collectively the "Appellants"). The Appellants, save ACK*Now, all own property that abut 14 New Mill Street (the "Property") or are within 300 feet of the Property as shown by the Assessors' abutters' list attached to this appeal. *See* **Addendum F**. Therefore, they are "parties in interest" pursuant to G.L. c. 40A with respect to any zoning decision concerning the Property.

ACK*Now is a local non-profit whose mission is "to inspire the change needed to protect what the community loves about Nantucket." One of its primary goals is to develop "compelling, innovative solutions for the lack of housing that is affordable and stable for the community." ACK*Now sees the dramatic rise of investor-owned STRs on the Island as a central input in the year-round housing crisis, and is actively working to stem that impact.

All Appellants requested zoning enforcement for a violation at the Property. The Building Commissioner denied the Appellants' requested enforcement. As such, they are aggrieved by the Building Commissioner's Decision and appeal it to this Board.

Addendum A

Planning and Land Use Services

Building ▪ Historic District Commission ▪ Planning Board ▪ Zoning Board of Appeals

BUILDING DIVISION

December 1, 2020

Nina Pickering-Cook
Anderson and Krieger, LLP
50 Milk Street. 21st Floor
Boston, MA 02109
Pickering@andersonkreiger.com

Reference: Request for Zoning Enforcement at 14 New Mill Street

Dear Ms. Pickering-Cook,

I am in receipt of your zoning enforcement request letter dated November 12, 2020, submitted on behalf of your client, ACK*NOW Group with regard to the property located at 14 New Mill Street, Nantucket (the "Property"). I respectfully decline to pursue zoning enforcement at this time because, in my opinion, the use of the property for short term rentals does not violate the Town's Zoning Bylaw.

If your client is aggrieved by this determination, you may appeal to the Nantucket Zoning Board of Appeals pursuant to G.L. c. 40A Sections 8 and 15.

Very truly yours,

Paul Murphy

Paul Murphy
Building Commissioner
Town of Nantucket

Cc: Andrew Vorce, Director of Planning
Leslie Snell, Deputy Director of Planning

Certified Mail # 7018 1130 0002 2740 6642

Addendum B

ANDERSON
KREIGER

MEMORANDUM

To: Nantucket Zoning Board of Appeals

From: Nina Pickering-Cook and Lily Ricci
ANDERSON & KREIGER LLP

Re: Statement of Facts and Law, and Requested Relief

Date: December 30, 2020

This office represents Mark and Rosanne Welshimer of 3 New Mill Street, Janet and Keith Lindgren of 4 New Mill Street, Esta Lee and Harris Stone of 9 New Mill Street, John Kilmartin III of 11 New Mill Street and J. Tristram and Beverly Dammin of 12 New Mill Street and ACK*Now of 28B Easy Street, all of Nantucket (collectively the "Appellants").

The Appellants appeal the Building Commissioner's December 1, 2020 decision (the "Decision") pursuant to Zoning Code Section 139-31-A-(1) and Massachusetts General Laws Chapter 40A, Sections 8 and 15. In the Decision, the Commissioner determined that use of the Property exclusively for short-term rentals ("STR") does not violate Nantucket's Zoning Bylaws despite its location in a residential zone. This finding is inconsistent with the Town's Zoning Bylaws ("Bylaw") and the ROH zoning district in which the Property is located. Where no one resides at the Property and it is being used solely as a pay-per-night or week rental operation, it is more properly defined as a Transient Residential Facility and, therefore, not allowed in the ROH residential district without a special permit.

BACKGROUND

The Property is a 5 bedroom, 4½ bath single-family home located in the downtown Historic District of Nantucket. The Property is located in the ROH District, which permits only residential uses except in very limited circumstances (that do not apply here).

The owner of the Property, the Copley Group, is a Massachusetts Limited Liability Company based in Boston. The Copley Group purchased the Property in 2016. It appears to also own numerous residential buildings in the Greater Boston area and fourteen luxury homes on Nantucket. **Exhibit A**. The Owner advertises the Property as part of its "Nantucket Collection," which are luxury rental homes available for rent year-around at both nightly and weekly rates. The services provided by the Owner to renters of its properties include things like a personal concierge. **Exhibit A**.

The Property is advertised on multiple luxury vacation websites, including the Copley Group's own Nantucket Collection site, Sotheby's International, and CapeCodVacation.com. **Exhibit B**. Prices range from $1,000 per night during the winter months to $2,500 per night during peak weeks in the summer and fall. **Exhibit C.** Based on information and belief, no resident of Nantucket (or anywhere else) has lived in the Property as its residence since at least 2016 when purchased by the Copley Group.

The Appellants, particularly those in the immediate neighborhood of the Property, have experienced harm as a result of the use of the Property exclusively as a STR. Specifically, the Appellants have had increased noise and traffic from the Property, which they can describe further during the ZBA's hearing.

As demonstrated by the manner in which Copley Group is advertising the Property and the Appellants experience with customers at the Property, the Property's exclusive use as an STR is antithetical to the surrounding residential uses within the ROH District. The Copley Group is operating a business through the Property for commercial purposes in direct contravention of the Zoning Bylaw. The Board should therefore order Copley Group to cease and desist all such uses at the Property.

On November 12, 2020, pursuant to G.L. 40A, § 7 and Town Zoning Bylaw § 139-25, the Appellants filed a request with Nantucket's Building Commissioner requesting that he issue a cease and desist order to Copley Group for using the Property as an STR in a residential district. **Addendum C.** The Commissioner denied the appellants request on December 1, 2020, refusing to find the use of the Property as an STR violates the Town Zoning Bylaw. **Addendum A.** Where his Decision is not supported by either the Nantucket Zoning Bylaw or binding Massachusetts case law, this Board should take the unusual step of overturning the Building Commissioner's determination.

LEGAL ARGUMENT

A. <u>The Owner's Use of the Property is a Commercial Use Not Permitted in the Residential Zoning District.</u>

The Bylaw defines "commercial" as "a trade, occupation, or business, including transient residential facility, but excluding governmental, religious or private residential uses." Bylaw §139-2. On Nantucket, no commercial uses are allowed in the "Town Residential" districts (R-1, SR-1, ROH, SOH, R-5, R-5L, R-10, R-20 and R-40) or in the Country Residential districts (V-R, LUG-1, LUG-2, LUG-3 and MMD), with very limited exceptions.

By its nature as an investor-owned rental property, the Property exists exclusively to serve commercial business purposes. Copley Group is conducting numerous arms-length transactions for fixed rates over brief periods of time with unrelated third parties. Massachusetts courts have recently held that these type of commercial enterprises that charge weekly rental rates via

contractual agreement are indeed commercial in nature and have no business in residential districts. *See, e.g.*, *Stevens v. Zoning Bd. of Appeals of Bourne*, 97 Mass. App. Ct. 713 (2020) (finding an STR property that was solely rented pursuant to rental contracts with unrelated third parties was a commercial use prohibited in a residential district); *Styller v. Aylward*, 2018 WL 4502015, at *7 (Mass. Land Ct. Sept. 19, 2018) (finding the same because "[h]omes are expected to be used as residences, not for profit."); *Lytle v. Swiec*, 2017 WL 2257702 (Mass. Land Ct. May 23, 2017) (holding a homeowner's use of one dwelling in his two-dwelling single-family home for weekly summer rentals was a commercial use prohibited in a residential district).

Although the Bylaw excludes "private residential uses" from the definition of "commercial," Copley Group's use of the Property has nothing to do with "private residential uses." Operating a company to rent an investment house to strangers is not even remotely akin to the "private uses" envisioned by the Bylaw, like offering one's residence to family or friends for the week, or inviting guests to stay at a property while the primary resident is there. In fact, because the Property is owned by an investor-group, there is no "resident" to use the home for private purposes; no one lives in the house full time. In fact, where the Property is available to rent in short term stints year round, it is not possible to have the Property serve as anyone's residence. Taken together, these attributes of the Property place it squarely within the definition of "commercial".

B. <u>The Property is a Transient Residential Facility</u>

Rather, the Property is more properly characterized as a "Transient Residential Facility." Transient Residential Facilities are defined as "hotels; rooming, lodging or guest houses; and time-sharing or time-interval-ownership dwelling unit(s)." Bylaw § 139-2. Similar to commercial uses, no transient residential facilities are allowed in residential zoning districts, with the exception of rooming, lodging or guest houses, which are only allowed in ROH districts with a special permit. Bylaw § 139-7A.

The Property is continually available for short-term rentals in both daily and weekly increments. Therefore, the Property, as an investor-owned STR, is more closely aligned with the purposes and uses defined as transient residential uses than those uses defined as residential. For example, hotels offer rooms at both nightly and weekly rates, just as the Property does. Hotels also conduct arms-length transactions with third parties for financial gain, just as the Property does. The definition of "transient residential facilities" also includes "time-sharing" and "time-interval-ownership dwelling units," both of which cater to longer periods of use, but additionally require actual equity ownership in the property. By comparison, this Property actually has a *more* transient customer base than time-sharing or interval ownership, with shorter booking periods and renters who lack any ownership interest in the Property.

To find that the Property is a traditional residence and not a transient residential facility would render the definitional group of "transient residential facilities" an illogical combination of uses ill-suited to uniform application required under the Town's Zoning Bylaw. All types of lodging

included within the Bylaw's definition of transient residential facilities cater to the same customer base as the Property and other STRs – individuals or small groups, who live elsewhere and who are looking to rent for a short, defined period of time. Most transient residential facilities also presumably have similar impacts on surrounding areas, which is why the Bylaw is incredibly explicit about where these uses can legally take place (commercial districts) versus where they can only take place with permission or not at all (residential districts).

Excluding this Property (and all investor-owned STRs) from the definition of transient residential facilities is contrary to the State's characterization of STRs. In December 2018, the Massachusetts Legislature passed "An Act Regulating and Insuring Short Term Rentals." G.L. 64G, *et seq*. All of the lodging types listed as "transient residential facilities" in the Zoning Bylaw are subject to the room occupancy tax under G.L. 64G, §3, a list that now includes STRs. The Legislature's decision to include STRs renting more than 14-days a year in the room occupancy tax list is evidence that the state considers STRs such at this Property to be "commercial" not personal residential use, and therefore akin to a "transient residential facilities" on the island.

C. The Use of the Property as a STR is Not Accessory to Residential Use

A common refrain by owners of STRs is that using a property as an STR is an accessory use to the primary residential use. That argument fails here. Although "accessory dwelling" units are allowed in all residential districts on Nantucket, this Property cannot be considered an "accessory use" because there are simply no residents at the Property to create a residential use to be "accessory" to.

The Bylaw defines "accessory uses" as "separate structures, buildings or uses which are *subordinate* and *customarily incidental* to a principal structure, building or use located on the same lot." Bylaw § 139-2 (emphasis added). The principal structure located on the lot is a single family residence. **Exhibit D**. A "residence" is defined as "the act or fact of dwelling in a place *for some time*," or "the place where one actually lives as distinguished from one's domicile or a place of temporary sojourn." Miriam–Webster's Dictionary, (11th ed. 2020) (emphasis added). Therefore, to qualify as an "accessory dwelling," the rental of the Property would have to be subordinate to the Property's use as a single family residence. Based on advertising, ownership structure, and Appellant testimonials, the Property is very plainly not a single family residence; it is a rental property 365 days a year. **Exhibit C**. Thus, the rental use predominates any other use and cannot be "accessory."

Whether STRs can be accessory uses under zoning is an issue that has been decided by the courts. Just as Massachusetts courts have held that STRs are commercial uses, courts have also consistently found that STRs are not an accessory use to a residential use. *See Stevens*, *supra*, 97 Mass. App. Ct. 713; *Styller v. Aylward*, WL 4502015 (Mass. Land Ct. Sept. 19, 2018); *Lytle*, *supra,* 2017 WL 2257702. In *Styller,* the court reasoned that a single homeowner renting his

property on Airbnb was not "clearly incidental to the use of the principal building" as a single family residence. 2018 WL 4502015, at *7. As the Land Court explained:

> In zoning bylaws or ordinance, 'incidental' incorporates two concepts: It means that the use must not be the primary use of the property but rather *one which is subordinate and minor in significance* . . .[and] incidental, when used to define an accessory use, must also incorporate the concept of reasonable relationship with the primary use. It is not enough that the use be subordinate; *it must also be attendant or concomitant.* To ignore this latter aspect of 'incidental' would be to permit any use which is not primary, no matter how unrelated it is to the primary use.

Id. (internal citations and quotation marks omitted) (emphasis added). Using single family homes, such as the Property, as STRs is not "customary in connection with the principal building." Putting it bluntly, the court stated: "Most people do not rent out their homes on a continuing basis. They live in them." *Id*. at *8.

Likewise, in *Stevens*, the court refused to find that a house owned by an investment trust was an accessory use due in part to the fact that neither the Trustee nor any beneficiary of the trust resided at the property and use of the property was conducted pursuant to rental contracts with unrelated third parties, for financial gain by the investors. 97 Mass. App. Ct. at 718. In *Lytle*, the Land Court upheld the Hull ZBA's determination that short-term renting of a unit alongside a lived-in residence was an unlawful commercial use and not a permitted accessory use. 2017 WL 2257702 at *7. The court reasoned that even though the owner was still occupying one-dwelling in the two-dwelling single family home, the separate commercial use of the other dwelling unit was not an accessory use due to the commercial nature of the rental. *Id*.

The bylaws of Lynnfield (*Styller*), Hull (*Lytle*) and Bourne (*Stevens*) all have similar definitions of "accessory use" to Nantucket's, and all forbid the use of STRs as accessory uses to residential uses in residential districts. Applying Nantucket Bylaws to the Property should yield the same results as in *Styller*, *Lytle*, and *Stevens*: using a residence primarily as a rental property is not an accessory use to a residential use. Such an arrangement is commercial in nature and should not be tolerated in residential districts.

Courts are also clear that STRs cannot be considered "incidental" or "customary" to residential uses because they necessarily disrupt the character and use of single family homes, as is the case at the Property. There is nothing "customary" to single-family home ownership about the fairly new concept of investors buying up homes to rent to unaffiliated members of the public for profit. Indeed, when these houses are continually rented out to different parties, they preclude the customary use of the home as a "single family residence." Additionally, as the court pointed to in *Styller*, the non-stop coming-and-going of different individuals destroys the concepts of

continuity and supervision, which are bedrock principles of residential zoning districts. *Stylle*r, 2018 WL 4502015, at *7.

CONCLUSION

Allowing the Commissioner's Decision to stand risks exacerbating a near-impossible situation for Nantucket's already over-priced and under-supplied year-round housing stock. If it refuses to define the Property as a "commercial use" or "transient residential facilities", this Board would be giving investor groups like Copley Group the green light to continue buying up single family homes in residential districts and turning them into high-turnover rental properties. This would further blur the lines of commercial versus residential, and come at a high cost to actual residents of Nantucket's many residential neighborhoods.

For these reasons and the many listed above, we urge the Board to overturn the Commissioner's Decision and find that the Property is a commercial use that is not allowed in the ROH district, and to require the Copley Group to immediately cease and desist such commercial operation at the Property.

Exhibit A

Arrival

Departure

SUBMIT

CONTEMPORARY NANTUCKET RENTAL HOMES

Nantucket Luxury Rentals: By The Copley Group

The Nantucket Collection rental homes are contemporary, sophisticated and comfortable. Embracing the quintessential Nantucket style with modern finishes, all of our homes are thoughtfully designed with the environment in mind. Our Nantucket rental homes boast spacious entertaining areas inside and out, state-of-the-art appliances, and the finest amenities you'll find on the island.

Experience Modern Luxury in Our Nantucket Vacation Rentals

Located in Surfside (https://www.thecopleygroupnantucket.com/nantucket-vacation-rentals/surfside), Brant Point (https://www.thecopleygroupnantucket.com/nantucket-vacation-rentals/brant-point), Monomoy (https://www.thecopleygroupnantucket.com/nantucket-vacation-rentals/monomoy) and Town (https://www.thecopleygroupnantucket.com/nantucket-vacation-rentals/in-town), our Nantucket vacation rentals range in size from three to six bedrooms and are perfect for family vacations, weekend getaways, weddings (https://www.thecopleygroupnantucket.com/weddings-nantucket), and events. Whether you're escaping the hustle or embracing the abundant recreation and things to do, you'll love coming back to our luxurious homes as your home away from home. Enjoy our complimentary concierge service (https://www.thecopleygroupnantucket.com/nantucket-concierge-services), which is included with all rentals. Sit back and relax, and let us do the work.

Secure Your Sanctuary in Nantucket Today

(https://www.thecopleygroupnantucket.com/concierge-services)

Concierge Service

(https://www.thecopleygroupnantucket.com/concierge-services)

(https://www.thecopleygroupnantucket.com/nantucket-vacation-rentals/surfside)

Beach Houses

(https://www.thecopleygroupnantucket.com/nantucket-vacation-rentals/surfside)

(https://www.thecopleygroupnantucket.com/nantucket-area-guide)

Area Guide

(https://www.thecopleygroupnantucket.com/nantucket-area-guide)

(https://www.thecopleygroupnantucket.com/specials)

Special Offers

(https://www.thecopleygroupnantucket.com/specials)

(https://www.thecopleygroupnantucket.com/homes-pools-or-hot-tubs)

Homes With Pools & Hot Tubs

(https://www.thecopleygroupnantucket.com/homes-pools-or-hot-tubs)

(https://www.thecopleygroupnantucket.com/weddings)

Wedding & Guest Accommodations

(https://www.thecopleygroupnantucket.com/weddings)

FEATURED PROPERTIES

HAND-PICKED, JUST FOR YOU

17 LILY STREET (/NANTUCKET-VACATION-RENTALS/17-LILY-STREET)

Town

4 Bedrooms | 4.5 Bathrooms | 9 Guests

14 NEW MILL STREET (/NANTUCKET-VACATION-RENTALS/14-NEW-MILL-STREET)

Town

5 Bedrooms | 4.5 Bathrooms | 10 Guests

54 FAIR STREET (/NANTUCKET-VACATION-RENTALS/54-FAIR-STREET)

Town

5 Bedrooms | 5.5 Bathrooms | 10 Guests

EXPERIENCE THE DIFFERENCE

Select Locations

From the beach to in town, all Copley Group Nantucket homes are selected for their convenient and desirable locations.

Customized Service

Our concierge is at your service to assist with reservations, renting cribs or car seats, booking activities and more.

Elevated Comfort

Luxurious, elegant and comfortable, our homes are equally suited for family beach days or evening cocktail parties.

Receive Exclusive Offers

Email Address *

Email Address

protected by reCAPTCHA
Privacy - Terms

SIGN UP

CONTACT US (/CONTACT-US)

The Copley Group Nantucket
PO Box 463
Nantucket, MA 02554
Phone: (508) 901-9877 (tel:5089019877)
Email: guestservice@thecopleygroup.com (mailto:guestservice@thecopleygroup.com)

Exhibit B

14 NEW MILL STREET

5 BR | 4.5 BA | 10 Guests

Add Favorite

Request info (https://www.thecopleygroupnantucket.com/vacation-rental-inquiry?inquiry_properties=72&url=https%3A//www.thecopleygroupnantucket.com/nantucket-vacation-rentals/14-new-mill-street) | Share this Listing

IMAGES VIDEO

SEARCH AVAILABILITY

Arrival

Departure

Promo Code

Search Availability

Featured Amenities

- Pet-Friendly
- Concierge
- Outdoor Speakers
- Air Condition
- Outdoor Shower

- Yard
- Beach Chairs
- Beach Towels
- Patio

Description

Newly renovated for the 2017 season, this 5 bedroom, 4.5 bath home is just a few steps from the top of Main St. The home is chock full of Nantucket charm with updated & modern amenities. Two yards & plenty of outdoor living space makes this home a fantastic choice for families, couples, or friends to enjoy all Nantucket has to offer. Off street parking and a quick drive to the South Shore of the island make this spot the ideal Nantucket retreat for all seasons.
All bedrooms and living room are equipped with HD wall mounted flat screen smart TVs, built-in speakers and Sonos sound system.

Enter the house into a great open kitchen & dining space complete with granite counter tops & a dining table that seats up to 10. Downstairs master bedroom with en suite bath is located off the kitchen, along with a separate half bath and laundry.

Large living room and game nook is located at the front of the house, along with two bedrooms (built in twins and a queen) which share a full bathroom.

Upstairs is an additional master bedroom with its own full bath and plenty of closet storage. Fifth bedroom with another en quite is located upstairs as well.

As with all Copley Nantucket properties, guests of 14 New Mill Street have access to Copley's complimentary concierge service for help making dinner reservations, organizing fishing trips, planning picnics, boating tours and more.

Amenities

Rates

Availability

Location

CONTACT US (/CONTACT-US)
The Copley Group Nantucket
PO Box 463
Nantucket, MA 02554
Phone: (508) 901-9877 (tel:5089019877)
Email: guestservice@thecopleygroup.com (mailto:guestservice@thecopleygroup.com)

QUICK LINKS
Home (/)
About Us (/about-us)
Privacy Policy (/privacy-policy)
Site Map (/sitemap)
Things To Do (/things-to-do)

FIND PROPERTY BY NAME

14 New Mill Street, Nantucket MA

32 Photos of 14 New Mill Street, Nantucket MA

RENTAL

5	4	1	10	TOWN
BEDROOMS	BATHROOMS	HALF BATHS	SLEEPS	AREA

This five bedroom, four-and-one-half bath antique is the perfect marriage of Nantucket charm and all the modern amenities - including high end appliances, furnishings, and appointments.There is plenty of green space, and a partially enclosed deck for outdoor dining. Plus, this home is located close to town - in convenient walking distance to all historic Main Street has to offer!

Show More

Rates and Availability

Guests arriving from out of state to vacation on Nantucket are responsible to comply with all local and Massachusetts state laws, rules, regulations and guidelines at the time of arrival. Such guidelines may include testing and/or a quarantine period as mandated by local and/or state authorities.

NEW COVID-19 TRAVEL ORDER AND INFO

*Published rates do not include local & state taxes. Current state tax is 5.7% and current local tax is 6%. These taxes are both subject to change.

**Availability & rates are subject to change. Please contact Maury People Sotheby's International Realty to confirm.

15 = Available ~~15~~ = Unavailable

June 2021

Availability

Su	Mo	Tu	We	Th	Fr	Sa
30	31	1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	~~19~~
~~20~~	~~21~~	~~22~~	~~23~~	~~24~~	25	26
27	28	29	30	1	2	3

Weekly Rates

Week	Rate
May, 28, 2021 to June, 4, 2021	$8500
June, 4, 2021 to June, 11, 2021	$9000
June, 11, 2021 to June, 18, 2021	$10000
June, 18, 2021 to June, 25, 2021	$12000
June, 25, 2021 to July, 2, 2021	$8500

July 2021

Availability

Su	Mo	Tu	We	Th	Fr	Sa
27	28	29	30	1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

Weekly Rates

Week	Rate
June, 25, 2021 to July, 2, 2021	$8500
July, 2, 2021 to July, 9, 2021	$14000
July, 9, 2021 to July, 16, 2021	$14000
July, 16, 2021 to July, 23, 2021	$14000
July, 23, 2021 to July, 30, 2021	$14000

August 2021

Availability

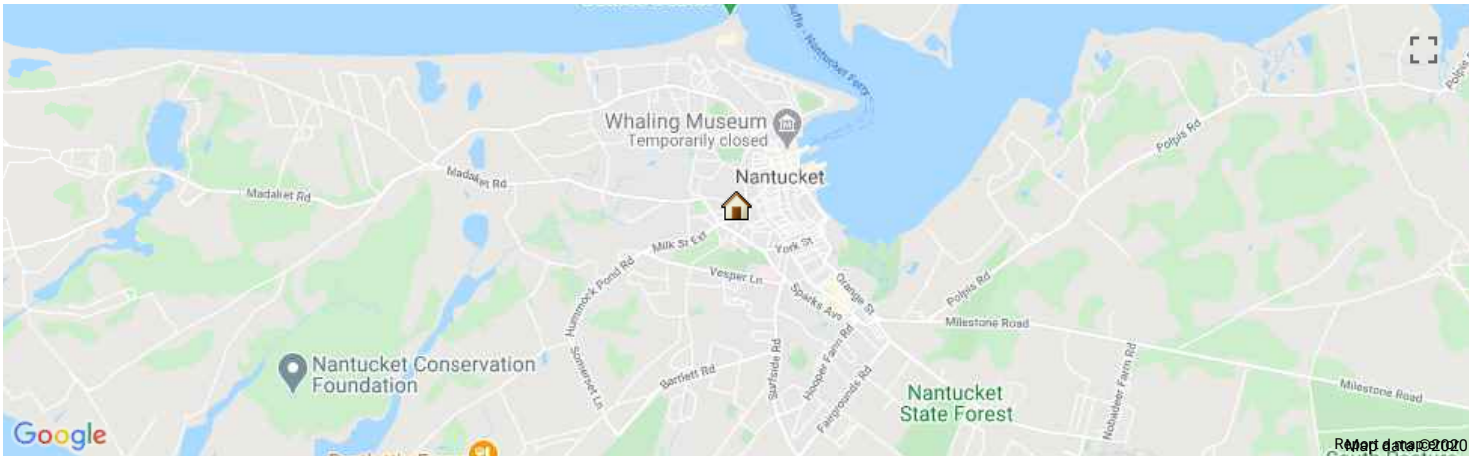
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31	1	2	3	4

Weekly Rates

Week	Rate
July, 30, 2021 to August, 6, 2021	$14000
August, 6, 2021 to August, 13, 2021	$14000
August, 13, 2021 to August, 20, 2021	$14000
August, 20, 2021 to August, 27, 2021	$14000
August, 27, 2021 to September, 3, 2021	$14000

Today

Map


Whaling Museum
Temporarily closed
Nantucket
Madaket Rd
Milk St Ext
York St
Vesper Ln
Orange St
Polpis Rd
Hummock Pond Rd
Sparks Ave
Milestone Road
Nantucket Conservation Foundation
Somerset Ln
Barnett Rd
Surfside Rd
Hooper Farm Rd
Fairgrounds Rd
Nantucket State Forest
Nobadeer Farm Rd
Milestone Road
Google
Map data ©2020

49

Inquire About 14 New Mill Street

Fill out the form below to request more information.

Your Name (required)

Your Email (required)

Contact Preference

Either

Special Requests or Comments (required)

Sign up for email alerts?

Phone

Evening Phone

Contact Time

Morning

Send a copy of this request to my email

Captcha (required)

I'm not a robot

reCAPTCHA

Privacy - Terms

Send Inquiry

50

Maury People Sotheby's International Realty

37 Main St, Nantucket, MA 02554 | (508) 228-1881 info@maurypeople.com

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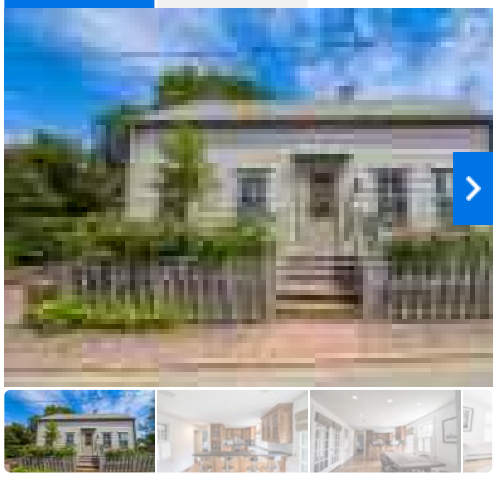
14 New Mill Street, Nantucket - Town

Tweet Like 0

Photos | Map



Overview

Property ID	136211
Per week	$5,000 - $13,000
Property Type	House
Bedrooms	5
Sleeps	10
Occupancy Limit	10
Full Baths	4
Half Baths	1
Pets Allowed	No
Smoking	No

Availability | Rates | Request Quote

Favorite

$5,000 - $13,000 week

REQUEST QUOTE

Customer Reviews (0)

+ Write a Review

Need Help?

Please click to Chat Now or call from 9am to 5pm at 508.228.9117

Description

Serene and private, tucked away on a side street, 14 New Mill has an efficient floor plan perfect for families and friends vacationing together. The first floor is composed of an open kitchen/ dining area, living room with reading nook and 3 bedrooms. 2 bedrooms with en suite bathrooms are located on the second floor. All bedrooms and living room are equipped with HD wall mounted flat screen smart TVs, built-in speakers and Sonos sound system.

Amenities

GENERAL

- 2 King Bed(s)
- 2 Queen Bed(s)
- 2 Single Bed(s)
- Smoke Free

TECHNICAL

- High Speed Internet
- Television
- Wired LAN
- Wireless Lan (Wi-Fi)

KITCHEN

- Blender
- Coffee Maker
- Dishwasher
- Full Size Refrigerator
- [illegible]net Kitchen
- Lobster Pot
- Microwave
- Oven
- [illegible]
- Toaster

Contact Us

Name

Email Address

Phone Number

Message

SUBMIT

Telephone: 508.228.9117

Fax: 508.228.9227

OTHER

- 1 Parking Spaces
- BBQ Gas
- Beach Equipment
- Deck Furniture
- Dryer
- Iron
- Ironing Board
- Lawn Area
- Open/Covered Porch
- Outside Shower
- Patio
- Washer

ELECTRONICS DESCRIPTION

- Sonos sound system

Contact Us

Name Email Address

Phone Number Message

SUBMIT

Telephone: 508.240.2222
Fax: 508.255.1222

HELPFUL LINKS

- Found a rental - what's next?
- Tenant guide
- List your rental property
- Buy a home
- Local housing data
- Mortgage rate watch
- Company information

Download Raveis Cape Cod App ›

ABOUT WILLIAM RAVEIS

Whether you are a homeowner thinking of renting your property or a guest coming to Cape Cod & Nantucket, rest assured that you will be taken care of by the best in the business when you work with William Raveis - The Rental Company.

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With Vacation Rental Specialists from Falmouth to Provincetown and Nantucket, we can help you find the perfect home for your summer getaway!

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- Online Chat
- Office Locations
- Contact Us by Email
- Call Us - 508.240.2222 (Cape Cod) or 508.228.9117 (Nantucket)

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Privacy Policy | Licensing | Index of All Listings

Exhibit C

14 NEW MILL STREET

5 BR | 4.5 BA | 10 Guests

Add Favorite

Request info (https://www.thecopleygroupnantucket.com/vacation-rental-inquiry?inquiry_properties=72&url=https%3A//www.thecopleygroupnantucket.com/nantucket-vacation-rentals/14-new-mill-street) | Share this Listing

IMAGES VIDEO

SEARCH AVAILABILITY

Arrival

Departure

Promo Code

Search Availability

Featured Amenities

- Pet-Friendly
- Concierge
- Outdoor Speakers
- Air Condition
- Outdoor Shower

- Yard
- Beach Chairs
- Beach Towels
- Patio

Description

Amenities

Rates

The Copley Group's Nantucket Collection homes are available for rent year-round. A one-week minimum rental- from Friday to Friday- is required during the summer high season. During non-peak season we have a three-night minimum stay requirement. For nightly rates during the shoulder and off-season please call or email us directly.

Any rates that are listed below are subject to change and should not be considered price quotes.

Dates	Nightly	Weekly
12/12/20 - 12/18/20	$1,450	$5,000
12/19/20 - 12/25/20	$1,450	$5,000
12/26/20 - 12/31/20	$1,450	$5,000
01/01/21 - 01/07/21	$1,000	
01/08/21 - 01/14/21	$1,000	
01/15/21 - 01/21/21	$1,000	
01/22/21 - 01/28/21	$1,000	
01/29/21 - 02/04/21	$1,000	
02/05/21 - 02/11/21	$1,000	
02/12/21 - 02/18/21	$1,000	
02/19/21 - 02/25/21	$1,000	
02/26/21 - 03/04/21	$1,000	
03/05/21 - 03/11/21	$1,000	
03/12/21 - 03/18/21	$1,000	
03/19/21 - 03/25/21	$1,000	
03/26/21 - 04/01/21	$1,000	
04/02/21 - 04/08/21	$1,000	
04/09/21 - 04/15/21	$1,000	
04/16/21 - 04/22/21	$1,000	

Dates	Nightly	Weekly
04/23/21 - 04/24/21	$1,650	
04/25/21 - 04/29/21	$1,000	
04/30/21 - 05/06/21	$1,143	
05/07/21 - 05/13/21	$1,143	
05/14/21 - 05/18/21	$1,143	
05/19/21 - 05/22/21	$2,125	
05/23/21 - 05/27/21	$1,143	
05/28/21 - 05/30/21	$2,125	
05/31/21 - 06/03/21	$1,286	
06/04/21 - 06/10/21		$9,000
06/11/21 - 06/17/21		$10,000
06/18/21 - 06/24/21		$12,000
06/25/21 - 07/01/21		$14,000
07/02/21 - 07/08/21		$14,000
07/09/21 - 07/15/21		$14,000
07/16/21 - 07/22/21		$14,000
07/23/21 - 07/29/21		$14,000
07/30/21 - 08/05/21		$14,000
08/06/21 - 08/12/21		$14,000
08/13/21 - 08/19/21		$14,000
08/20/21 - 08/26/21		$14,000
08/27/21 - 09/02/21		$14,000
09/03/21 - 09/09/21		$12,000
09/10/21 - 09/16/21		$12,000
09/17/21 - 09/23/21		$12,000
09/24/21 - 09/30/21		$8,000
10/01/21 - 10/07/21	$1,143	
10/08/21 - 10/10/21	$2,500	
10/11/21 - 10/14/21	$1,143	

Dates	Nightly	Weekly
10/15/21 - 10/21/21	$1,143	
10/22/21 - 10/28/21	$1,143	
10/29/21 - 11/04/21	$1,143	
11/05/21 - 11/11/21	$1,143	
11/12/21 - 11/18/21	$1,143	
11/19/21 - 11/24/21	$1,143	
11/25/21 - 11/27/21	$1,667	
11/28/21 - 12/02/21	$1,000	
12/03/21 - 12/04/21	$2,500	
12/05/21 - 12/09/21	$1,143	
12/10/21 - 12/16/21	$1,143	
12/17/21 - 12/23/21	$1,143	
12/24/21 - 12/25/21	$1,750	
12/26/21 - 12/30/21	$1,143	
12/31/21 - 01/07/22	$1,143	

Availability

Location

CONTACT US (/CONTACT-US)

The Copley Group Nantucket
PO Box 463
Nantucket, MA 02554
Phone: (508) 901-9877 (tel:5089019877)
Email: guestservice@thecopleygroup.com (mailto:guestservice@thecopleygroup.com)

QUICK LINKS

Home (/)
About Us (/about-us)
Privacy Policy (/privacy-policy)
Site Map (/sitemap)
Things To Do (/things-to-do)

FIND PROPERTY BY NAME

Exhibit D

14 NEW MILL ST

Location	14 NEW MILL ST	**Mblu**	5544/ / 72/ /
Acct#	00011161	**Owner**	14 NEW MILL STREET LLC
Assessment	$1,581,300	**PID**	11161
Building Count	1		

Current Value

Assessment			
Valuation Year	**Improvements**	**Land**	**Total**
2020	$938,300	$643,000	$1,581,300

Owner of Record

Owner	14 NEW MILL STREET LLC	**Sale Price**	$1,675,000
Co-Owner		**Certificate**	
Address	896 BEACON STREET BOSTON, MA 02215	**Book & Page**	01559/0133
		Sale Date	10/14/2016
		Instrument	00

Ownership History

Ownership History					
Owner	**Sale Price**	**Certificate**	**Book & Page**	**Instrument**	**Sale Date**
14 NEW MILL STREET LLC	$1,675,000		01559/0133	00	10/14/2016
STEVENS BARBARA D TRST	$0		01160/0218	99	11/19/2008
STEVENS BARBARA D	$1,575,000		00945/0002	00	03/17/2005
MCADAMS TIMOTHY C	$1,150,000		00873/0128	8N	02/09/2004
MAHONEY JOHN A & MARY A	$775,000		00582/0042	01	06/15/1998

Building Information

Building 1 : Section 1

Year Built:	1820
Living Area:	2,076
Replacement Cost:	$1,139,013
Building Percent Good:	82
Replacement Cost Less Depreciation:	$934,000

Building Attributes	
Field	**Description**

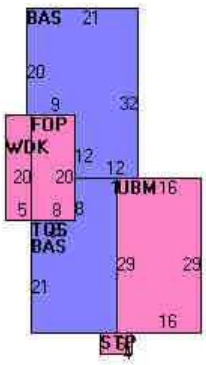
60

Style	Antique
Model	Residential
Grade:	Good
Stories:	1.75
Occupancy	1
Exterior Wall 1	Wood Shingle
Exterior Wall 2	Clapboard
Roof Structure:	Salt Box
Roof Cover	Asph/F Gls/Cmp
Interior Wall 1	Plastered
Interior Wall 2	K PINE/A WD
Interior Flr 1	Pine/Soft Wood
Interior Flr 2	
Heat Fuel	Oil
Heat Type:	Hot Water
AC Type:	None
Total Bedrooms:	5 Bedrooms
Total Bthrms:	4
Total Half Baths:	1
Total Xtra Fixtrs:	
Total Rooms:	
Bath Style:	Average
Kitchen Style:	Modern
Num Kitchens	01
Cndtn	
Usrfld 103	
Usrfld 104	
Usrfld 105	
Usrfld 106	
Usrfld 107	
Num Park	
Fireplaces	
Usrfld 108	
Usrfld 101	
Usrfld 102	
Usrfld 100	
Usrfld 300	
Usrfld 301	

Building Photo

(http://images.vgsi.com/photos/NantucketMAPhotos//\00\01\39\32.jpg)

Building Layout



(http://images.vgsi.com/photos/NantucketMAPhotos//Sketches/11161_1286

Building Sub-Areas (sq ft)			Legend
Code	Description	Gross Area	Living Area
BAS	First Floor	1,428	1,428
TQS	Three Quarter Story	864	648
FOP	Porch, Open, Finished	160	0
STP	Stoop	24	0
UBM	Basement, Unfinished	464	0
WDK	Deck, Wood	100	0
		3,040	2,076

Extra Features

Extra Features				Legend
Code	Description	Size	Value	Bldg #

FPL3	2 STORY CHIM	1.00 UNITS	$3,400	1
FLU2	BRICK	1.00 UNITS	$900	1

Land

Land Use

Use Code	1010
Description	Single Fam M01
Zone	ROH
Neighborhood	750
Alt Land Appr	No
Category	

Land Line Valuation

Size (Acres)	0.14
Frontage	0
Depth	0
Assessed Value	$643,000

Outbuildings

Outbuildings	Legend
No Data for Outbuildings	

Valuation History

Assessment			
Valuation Year	**Improvements**	**Land**	**Total**
2020	$938,300	$643,000	$1,581,300
2018	$682,000	$731,300	$1,413,300
2017	$494,700	$731,300	$1,226,000
2016	$479,000	$705,700	$1,184,700
2015	$501,800	$719,600	$1,221,400

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Addendum C

ANDERSON
KREIGER

Nina Pickering-Cook
pickering@andersonkreiger.com
t: 617.621.6536

November 12, 2020

VIA EMAIL
Marcus Silverstein, Zoning Enforcement Officer
Town of Nantucket
2 Fairgrounds Road
Nantucket, MA 02554
msilverstein@nantucket-ma.gov

Re: ***Request for Zoning Enforcement at 14 New Mill Street, Nantucket***

Dear Mr. Silverstein:

I represent the advocacy group ACK*Now and the following individuals: Mark and Rosanne Welshimer of 3 New Mill Street, Janet and Keith Lindgren of 4 New Mill Street, Doug and Linda Roth of 6 New Mill Street, John Kilmartin III of 11 New Mill Street and J. Tristram and Beverly Dammin of 12 New Mill Street (collectively, the "Requestors").[1] I am writing on their behalf to request zoning enforcement against the neighboring property located at 14 New Mill Street owned by 14 New Mill Street, LLC (managed by Copley Management & Development Corp.) (the "STR Property"). Based on public advertising (attached hereto as Exhibit 1 and available at https://www.thecopleygroupnantucket.com/) and personal experience as its neighbor, the STR Property is being used primarily, if not exclusively, as a short-term rental.[2]

14 New Mill Street's use as a short-term rental is a commercial use and, thus, is prohibited in the ROH, SOH District in which it is located. The ROH, SOH District only permits residential uses, although it does allow rooming lodging and guest houses, but only if the owner has obtained a Special Permit for the property for use as a "Transient Residential Facility" as defined in the Nantucket Zoning Bylaw. Although it appears a single family home from the outside, the STR Property is not a legitimate residential use under the Nantucket Zoning Bylaw for all the reasons set forth in the memorandum attached as Exhibit 2.

[1] I represent the individuals solely for the purpose of this zoning enforcement action, and any related appeal.

[2] Although there is no definition for this use in the Nantucket Zoning Bylaw, G.L. c. 64G, §1 defines it as "an owner-occupied, tenant-occupied or non-owner occupied property including, but not limited to, an apartment, house, cottage, condominium or a furnished accommodation that is not a hotel, motel, lodging house or bed and breakfast establishment, where: (i) at least 1 room or unit is rented to an occupant or sub-occupant; and (ii) all accommodations are reserved in advance; provided, however, that a private owner-occupied property shall be considered a single unit if leased or rented as such.

As a result, my clients are requesting, pursuant to G.L. c. 40A, § 7 and Nantucket Zoning Bylaw §139-25, that the Town, acting through your office, issue a cease and desist of that use for the STR Property. My clients look forward to seeing their neighboring property return to single family residential use and to the permanent housing stock for the Island.

Please respond as required under Nantucket Zoning Bylaw §139-25(B)(1). If needed, I would be happy to provide more information specific to the STR Property (at least to the extent it is publicly available) and how it qualifies as a commercial use. I can be reached at the phone and email listed above. Thank you for your consideration of this important issue.

Sincerely,

Nina Pickering-Cook

cc (via email): Clients
Nantucket Building Commissioner

November 12, 2020 Enforcement Request
EXHIBIT 1

14 New Mill Street [1]

AREA

- Town

BATHROOM 5

- Half Bath

View Property Tour [2]

Search Availability

Arrival

Departure

Promo Code

Search Availability

SLEEP CAP

- 10

BEDROOMS

- 5.00

BEDROOM 1

- King

BATHROOM 1

- Full Bath

BEDROOM 2

- Queen

BEDROOM 3

- 2 Twins

BEDROOM 4

- King

NUMBER OF BATHROOMS

- 4.5

Share this Listing
Leave a Review [3]

BATHROOM 2

- Full Bath

CONCIERGE

- Upon Request

BEDROOM 5

- Queen

BATHROOM 3

- Full Bath

BATHROOM 4

- Full Bath

BATHROOM 1 DETAILS

- Shower-only

BATHROOM 2 DETAILS

- Shower-only

BATHROOM 3 DETAILS

- Shower-only

BATHROOM 4 DETAILS

- Shower-only

COFFEE MAKER

- Drip

[4]

[5]

[6]

[7]

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[9]

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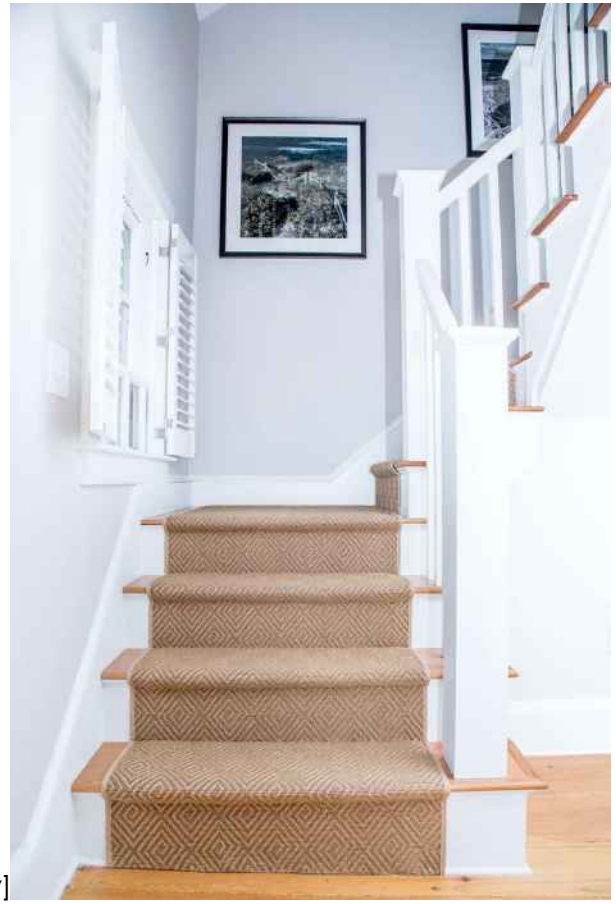
[17]

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[27]

***5* Bedrooms**

***4.5* Baths**

Newly renovated for the 2017 season, this 5 bedroom, 4.5 bath home is just a few steps from the top of Main St. The home is chock full of Nantucket charm with updated & modern amenities. Two yards & plenty of outdoor living space makes this home a fantastic choice for families, couples, or groups to enjoy all Nantucket has to offer. Off street parking and a quick drive to the South Shore of the island make this spot the ideal Nantucket retreat for all seasons.
All bedrooms and living room are equipped with HD wall mounted flat screen smart TVs, built-in speakers and Sonos sound system.

Enter the house into a great open kitchen & dining space complete with granite counter tops & a dining table that seats up to 10. Downstairs master bedroom with en suite bath is located off the kitchen, along with a separate half bath and laundry.

Large living room and game nook is located at the front of the house, along with two bedrooms (built in twins and a queen) which share a full bathroom.

Upstairs is an additional master bedroom with its own full bath and plenty of closet storage. Fifth bedroom with another en quite is located upstairs as well.

As with all Copley Nantucket properties, guests of 14 New Mill Street have access to Copley's complimentary concierge service for help making dinner reservations, organizing fishing trips, planning picnics, boating tours and more.

AMENITIES

- Area *Town*
- Linens
- Dishes and Silverware

14 New Mill Street – Short-Term Rental Listing Information

THE COPLEY GROUP

The Copley Group owns and manages residential apartments and commercial properties in Boston's Back Bay, Beacon Hill, South Boston and Fenway neighborhoods as well as in Brookline, Newton, and Stoneham. Currently, the Company serves approximately 20 associations representing close to 2,000 condominium units in Eastern Massachusetts and manages more than 1,000 residential apartments and approximately 200,000 square feet of commercial space.
Founded in 1965 The Copley Group soon became known as one of the area's leading property management firms with its acquisition of more than 700 rental apartments in Boston's Fenway neighborhood. As condominiums became an increasingly popular housing alternative, The Copley Group expanded to serve the growing demand for management services specifically geared to condominium and cooperative communities. Since its inception, The Copley Group has specialized in real estate development and acquisition. Our success in this area is due to careful analysis, in-depth market knowledge, strong relationships with financial sources and sound business sense. Our portfolio of renovated properties has included commercial landmarks in Boston's financial district, townhouses in the city's best neighborhoods, fine apartment buildings in Chestnut Hill and the Fenway and upscale apartments and commercial buildings in suburban communities.
At The Copley Group, we are guided by a management philosophy that emphasizes proactive strategies, realistic goal setting, and teamwork. Our experienced managers are empowered to blend creativity with time-tested management methods. Customized service for each client and resident is our priority.
Nantucket Luxury Rentals: By The Copley Group

The Nantucket Collection rental homes are contemporary, sophisticated and comfortable. Embracing the quintessential Nantucket style with modern finishes, all of our homes are thoughtfully designed with the environment in mind. Our Nantucket rental homes boast spacious entertaining areas inside and out, state-of-the-art appliances, and the finest amenities you'll find on the island.

Experience Modern Luxury in Our Nantucket Vacation Rentals
Located in Surfside, Brant Point, Monomoy and Town, our Nantucket vacation rentals range in size from three to six bedrooms and are perfect for family vacations, weekend getaways, weddings, and events. Whether you're escaping the hustle or embracing the abundant recreation and things to do, you'll love coming back to our luxurious homes as your home away from home. Enjoy our complimentary concierge service, which is included with all rentals. Sit back and relax, and let us do the work.
Wedding & Guest Accommodations - Are you planning your dream Nantucket wedding? Nantucket is a quintessential romantic destination for a wedding, and our team is here to offer expert planning advice. **From historic venues to the best Nantucket food, our wedding guide offers local expertise to plan your dream day.**

The Copley Group Nantucket has 14 luxurious homes that will help to make your wedding weekend perfect. If you need a venue for your intimate Nantucket wedding, rehearsal dinner or bridal shower, look no further than 32 Nonantum Ave. This spectacular Nantucket rental home can hold events for up to 75 people and is conveniently located in Surfside, right across the street from Fisherman's beach.

14 New Mill Street - $14,000 per week in July & August
5 Bedrooms 4.5 Bathrooms 10 Guests

- Concierge
- Air Condition
- Outdoor Speakers
- Outdoor Shower
- Yard / patio

Newly renovated for the 2017 season, this 5 bedroom, 4.5 bath home is just a few steps from the top of Main St. The home is chock full of Nantucket charm with updated & modern amenities. Two yards & plenty of outdoor living space makes this home a fantastic choice for families, couples, or groups to enjoy all Nantucket has to offer. Off street parking and a quick drive to the South Shore of the island make this spot the ideal Nantucket retreat for all seasons.

All bedrooms and living room are equipped with HD wall mounted flat screen smart TVs, built-in speakers and Sonos sound system.

Enter the house into a great open kitchen & dining space complete with granite counter tops & a dining table that seats up to 10. Downstairs master bedroom with en suite bath is located off the kitchen, along with a separate half bath and laundry.

Large living room and game nook is located at the front of the house, along with two bedrooms (built in twins and a queen) which share a full bathroom.

Upstairs is an additional master bedroom with its own full bath and plenty of closet storage. Fifth bedroom with another en suite is located upstairs as well.

November 12, 2020 Enforcement Request
EXHIBIT 2

ANDERSON KREIGER

MEMORANDUM

To: Zoning Enforcement Officer, Town of Nantucket

From: Nina Pickering-Cook and Lily C. Ricci
ANDERSON & KREIGER LLP

Re: Support for Zoning Enforcement Against Certain Short Term Rentals on Nantucket

Date: November 12, 2020

This memo provides the legal support for the Town undertaking zoning enforcement against Short Term Rentals ("STRs") located in residential neighborhoods on Nantucket. Such STR use constitutes an unlawful "commercial use" in a residential zone.

I. Categorizing STRs as Commercial Uses Under the Zoning Bylaw.

Existing Massachusetts case law in this area, the regulatory scheme put in place by the Commonwealth, and the definitions set forth in the Nantucket Zoning Bylaw (the "Bylaw"), all support a finding that STRs are unlawful commercial uses within residentially-zoned neighborhoods. That support is set forth below.

A. STRs are Commercial Uses that are Not Allowed in Residential Zones.

Like nearly all zoning bylaws, Nantucket's Bylaw separates commercial and residential uses in most zones. For instance, no commercial uses are allowed in the "Town Residential" districts (R-1, SR-1, ROH, SOH, R-5, R-5L, R-10, R-20 and R-40) or in the Country Residential districts (V-R, LUG-1, LUG-2, LUG-3 and MMD), with very limited exceptions.[1] The Bylaws defines "commercial" as "a trade, occupation, or business, including transient residential facility, but excluding governmental, religious or private residential uses." Bylaws, § 139-2.

Massachusetts courts have found STRs to be commercial uses that do not belong in residential zoning districts and instead are business enterprises operating for financial gain. Like the Bylaw, these cases focus on the commercial nature of the operation and the transient nature of the occupants.

In *Lytle v. Swiec*, 2017 WL 2257702 (Mass. Land Ct. 2017), the Land Court held that a homeowner's use of one dwelling in his two-dwelling single-family home for weekly summer rentals was a commercial use separate from the primary residential use. The Land Court agreed

[1] For instance, irrelevant here, but Personal Services are allowed in almost all residential districts with a Special Permit from the ZBA.

with the local board's decision that an STR is a commercial enterprise and that weekly rental use is inconsistent with the purpose of a single-family residence district because the rental use is more "transient" than residential. *Id*. The Land Court found the plaintiff was "essentially operating a commercial enterprise in a single-family residential zone" and therefore held that the use of the second dwelling as an STR was not permitted. *Id.* at *5.

Similarly, the court in *Stevens v. Zoning Bd. of Appeals of Bourne*, 97 Mass. App. Ct. 713 (2020), affirmed the local building inspector and board's decision to issue a cease and desist order to an STR that primarily catered to weddings and other large events on the grounds that the property was a prohibited commercial use in a residential district. The *Stevens* court relied on the fact that the owners of the house used the property solely for events conducted pursuant to rental contracts with unrelated third parties for financial gain. *Id.* at 714. The investors did not live in the house, nor did they know the individuals to whom they were renting; the property existed purely for commercial purposes.

i. The Nature of STRs on Nantucket are Commercial.

Like *Lytle* and *Stevens*, STRs on Nantucket generally operate under similar conditions: the owners are using a public platform to advertise and rent out a house (one they often do not live in full-time) in a residential zone, to people they have never met, all coordinated by executing rental contracts. These activities are undertaken exclusively for business purposes and have nothing to do with private residential uses (such as visiting guests). STR owners (or those working for them) are conducting arms-length transactions governed by a contract put in place, by its very nature, for only brief periods of time.

Although the Bylaw excludes "private residential uses" from the definition of "Commercial", this does not apply to STR making them lawful. There is nothing "residential" or "private" about these types of transactions. Short term renters are not residing in these houses – they are temporary paying occupants, like hotel guests. And the transactions most often originate from advertisements on web platforms or listings with realtors (alongside typical rental listings), both of which are open to the public. These third-party providers may also collect a fee, further implicating the commercial nature of the use. The transactional nature of booking coupled with the transient use of STRs by renters squarely puts STRs within the "commercial use" definition.

ii. STRs are Transient Residential Facilities.

STRs are most aptly categorized under the Bylaw as "transient residential facilities." Transient residential facilities are defined as "hotels; rooming, lodging or guest houses; and time-sharing or time-interval-ownership dwelling unit(s)." Bylaws, § 139-2. No transient residential uses are

allowed in any residential districts with the exception of rooming, lodging or guest houses, which are only allowed in ROH and SOH districts with a special permit. Bylaw § 139-7A.[2]

Although STRs are not explicitly included in the definition of transient residential facilities, they are properly considered to be one. Indeed, the term would be rendered nonsensical if it was not applied to STRs. The language of the Bylaw supports defining STRs are a transient residential facility. For example, the Bylaw includes "time-sharing", a use with a less-frequent turnover and actual equity ownership in the property, as "transient residential." STRs typically have more frequent turnover than time-shares, and lack any ownership interest in the property. STRs are inherently *more* transient than time-shares, with few (if any) repeat guests, and *more* commercial, with payment required for every stay, not just annually as is typical with time-shares. If the Bylaw considers time-shares to be a commercial use as a "transient residential facility," then it is only logical for STRs to also be so included.

There is also plenty of support for finding STRs "transient residential facilities" outside of the plain language of the Bylaw. First, the very nature of the stay at STRs is short-term – *i.e.*, transient and temporary. The *Lytle* court explicitly pointed to the transient nature of STR guests as one of the crucial factors for finding a weekly STR rental in a single-family home was a commercial, not residential, use. *See Lytle*, 2017 WL 2257702, at *4-5 (using that specific word to describe the nature of the use of STRs). Second, each of the lodging types listed as "transient residential facilities" are subject to the room occupancy tax under G.L. 64G, §3. The Legislature's decision to include STRs (at least those renting more than 14-days a year) in the room occupancy tax list is evidence that the state considers STRs to be "commercial" and akin to a "transient residential facilities" on the island. Third, hotels, motels, lodging and guest houses all cater to the same type of customer as investor-owned STRs: individuals, usually without any personal connection to the owner of the property, looking to rent a room or house for a short period of time, *i.e.* "transient" guests.

Therefore, investor-owned STRs should be considered commercial "transient residential facilities" alongside hotels, motels, lodging, guest houses and time-shares.

B. <u>STRs are Not Accessory Uses to Residences.</u>

Claiming STRs are accessory uses to a residential use is a popular, albeit unsuccessful, argument often put forth by STR owners. Although "accessory dwelling" units are allowed in all residential districts, typical STR use could not be considered an "accessory use." The Bylaw defines "accessory uses" as "separate structures, buildings or uses which are subordinate and customarily incidental to a principal structure, building or use located on the same lot." § 139-2.

[2] STRs are distinct from rooming, lodging and guest houses. Rooming, lodging and guest houses all share the underlying fact that a residence lives on the property long-term, despite others occasionally coming and going. That is not the case for investor-owned STRs. There is no underlying residential use by the owner.

Massachusetts courts have consistently found that renting short term – either a house or part of the property – is *not* an accessory use to a residential use. Specifically, in Lynnfield, Hull, and Bourne, courts have concluded that STRs are not permissible "accessory uses" under their respective zoning bylaws and, therefore, when situated in a residential district, constitute zoning violations.

In *Styller v. Aylward*, the court reasoned that a single homeowner renting his property on Airbnb was not "clearly incidental to the use of the principal building" as a single family residence. 2018 WL 4502015, at *7 (Mass. Land Ct. Sept. 19, 2018). As the Land Court explained: "In zoning bylaws or ordinance, 'incidental' incorporates two concepts: It means that the use must not be the primary use of the property but rather *one which is subordinate and minor in significance* . . . [and] incidental, when used to define an accessory use, must also incorporate the concept of reasonable relationship with the primary use. It is not enough that the use be subordinate; *it must also be attendant or concomitant*. To ignore this latter aspect of 'incidental' would be to permit any use which is not primary, no matter how unrelated it is to the primary use." *Id.* (internal citations and quotation marks omitted) (emphasis added). Such short term rentals, the court held, are not "customary in connection with the principal building" as a single family residence. Putting it bluntly: "Most people do not rent out their homes on a continuing basis. They live in them." *Id.* at *8.

Like many of the STRs on Nantucket, the owners under review in *Styller* were not continually present and could not ensure the "continuity and supervision that are the essence of a single family district, and that the rentals are truly incidental to the use of the home as single family residence." *Id.* Where an STR is rented out frequently and the owner intends to use the property as a substantial supplemental source of income, the court refused to consider it an incidental use because it takes over and prevents the property from being used as a single family residence.

Wholesale displacement of the owner is not required for a court to strike down STR use as not "accessory" though. In *Lytle,* the Land Court upheld the Hull ZBA's determination that short-term renting of a unit alongside a lived-in residence was an unlawful commercial use and not a permitted accessory use. 2017 WL 2257702 at *7. The court reasoned that even though the owner was still occupying one-dwelling in the two-dwelling single family home, the separate commercial use of the other dwelling unit was not an accessory use due to the commercial nature of the rental. *Id.*

Likewise, in *Stevens,* the court refused to find a house owned by an investment trust was an accessory use due to the following factors:

1. Neither the Trustee nor any beneficiary of the trust resides at the property;
2. The use of the property for weddings is conducted pursuant to rental contracts with unrelated third parties, for financial gain by the investors; and

3. Use of venue for weddings and other large gathering by unrelated third parties on a rental basis is not accessory to its permitted residential use. *Id*. at 718.

Based on the above factors, the court ruled that the investor-owned event house was not an accessory use, and therefore was not allowed in the residential zoning district. *Id.*

Given the similarity in Nantucket's definition of "accessory use" with those of Lynnfield, Hull and Bourne, coupled with the strong language in the above case law, a court is highly unlikely to find any STR to be a lawful accessory use in a residential zone under the Nantucket Bylaw. The *Styller* Court was unequivocal - "[h]omes are expected to be used as residences, not for profit. Continuous rentals of a primary residence are contrary to the fundamental use of the home, as it leaves its primary residents without a place to stay." 2018 WL 4502015, at *7. Similarly, the court in *Stevens* relied in part on the fact that neither the Trustee nor any beneficiary of the trust resided at the property, rather the property existed exclusively for rental purposes and monetary gain. 97 Mass. App. Ct. at 717.

In addition, the courts are clear that STRs cannot be considered "incidental" or "customary" because STRs necessarily disrupt the character and use of single family homes. There is nothing "customary" to single-family home ownership about the fairly concept of renting out ones homes to random members of the public for profit. Indeed, when these houses are continually rented out to different parties, they preclude the use of the home as a "single family residence." Additionally, as the court pointed to in *Styller*, the non-stop coming-and-going of different individuals destroys the concepts of continuity and supervisions, which are bedrock principles of residential zoning districts. *Styller,* 2018 WL 4502015, at *7. STRs on Nantucket have all these disqualifying markers and more.

II. Procedure for Bringing this Zoning Enforcement Case.

To bring an action to enforce the Nantucket Zoning Bylaw in this manner, one must seek enforcement from the local zoning enforcement officer. ACK*Now, or a member thereof, can submit a written request to the zoning enforcement officer to issue a cease and desist order to a property owner operating an STR in a residential area in violation of Nantucket Zoning Bylaw § 139-7A, as an unlawful commercial use. *See* G.L. c. 40A, § 7. Note that, at this stage, the person making the request for enforcement of zoning bylaws need not be aggrieved under the law. *Warrington* v. *Zoning Bd. of Appeals of Rutland*, 78 Mass. App. Ct. 903, 904 (2010).

If, however, the zoning enforcement officer denies enforcement, or fails to respond within fourteen (14) days of receiving the request for enforcement, the requestor has thirty (30) days to appeal the decision to the ZBA. *Id.* § 8; *see also* Nantucket Bylaw § 139- 31. Unlike the request

for enforcement, however, for an appeal to the ZBA, the appealing party must have standing as a person "aggrieved" by the zoning violation pursuant to G.L. c. 40A, § 17.[3]

The ZBA has 100 days from the filing of the appeal to make a decision. Four out of five ZBA members would need to vote in favor of the appeal in order to overturn the zoning enforcement officer's decision. G.L. c. 40A, § 15. If the ZBA denies the appeal, the appealing party could then appeal the ZBA's decision to the Land Court. G.L. c. 40A, § 17. If the appeal is granted, the property owner on which enforcement is request can appeal to Superior Court. To set aside a ZBA's decision, the court must find, in light of all the evidence, that the decision was "based on a legally untenable ground, or is unreasonable, whimsical, capricious or arbitrary." *Furlong v. Zoning Bd. of Appeals of Salem*, 90 Mass. App. Ct. 737, 739 (2016) (citing *Shirley Wayside Ltd. Partnership v. Bd. of Appeals of Shirley*, 461 Mass. 469, 475 (2012)).

III. Conclusion

To stop the proliferation of short term rentals and their damaging effects in residential areas on the Island, the Town must use the Nantucket Zoning Bylaw to prohibit such clearly commercial uses in residential zones. Declining to do so would undermine the Town's zoning principle of separating such uses and embolden further blurring of those zoning lines, all at the costs of the quiet enjoyment of the true residential users in these neighborhoods.

[3] Section 17 states that "any person aggrieved" by a zoning board decision can appeal to Superior Court. "Person(s) aggrieved" have been defined to presumptively include all those who are "parties in interest" under c. 40A, § 11. Section 11 states that "'Parties in interest' as used in this chapter shall mean the petitioner, abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the petitioner as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town, the planning board of the city or town, and the planning board of every abutting city or town." (Emphasis added). This is commonly referred to as "abutters or abutters-to-abutters within 300 feet." These parties in interest enjoy presumptive standing to challenge a zoning decision (either enforcement or failure to enforce).

Addendum D

ARTICLE I
Purpose; Definitions

§ 139-1. Purpose.

To promote the health, safety, convenience, morals and general welfare of its inhabitants, to lessen the danger from fire and congestion and to improve the Town under the provisions of the State Zoning Act, MGL c. 40A, the use, construction, repair, alteration and height of buildings and structures and the use of land and the size and shape of lots in the Town of Nantucket are hereby restricted and regulated as hereinafter provided.

§ 139-2. Definitions and word usage.

A. Definitions. In this Zoning Bylaw, Chapter 139 of the Nantucket Code, the following terms, unless a contrary meaning is required by the context or is specifically prescribed, shall have the following meanings:

ACCESSORY DWELLING — A dwelling unit located within an owner-occupied single-family building. The exterior architectural design and use of an accessory dwelling shall be harmonious with the appearance and use of the structure as the owner's home. The gross floor area of the accessory dwelling shall not be more than the gross floor area of the primary dwelling and not greater than 550 square feet. The accessory dwelling shall be self-contained with separate sleeping, cooking and sanitary facilities for the exclusive use of the occupant. The structure containing the primary dwelling and accessory dwelling shall be in single ownership, and one of the units shall be owner-occupied.**[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009; amended 4-6-2015 ATM by Art. 61, AG approval 8-5-2015]**

ACCESSORY USES — Separate structures, buildings or uses which are subordinate and customarily incidental to a principal structure, building or use located on the same lot. [1] **[Amended 4-6-2015 ATM by Art. 64, AG approval 8-5-2015]**

ADULT ON-SITE MARIJUANA SOCIAL CONSUMPTION OPERATOR — A marijuana retailer where consumers are permitted to consume marijuana and marijuana products on its

1. **Editor's Note: The former definition of "affordable unit" which immediately followed this definition, was replaced by the definition of "inclusionary unit," which is included in its proper alphabetical sequence.**

premises**[Added 10-10-2018 STM by Art. 1, AG approval 8-6-2019]**

ADULT USES — All uses as described and defined in MGL c. 40A, § 9A, as may be amended from time to time to include: Any establishment which has 10% of its stock-in-trade on hand; whose sales, including rentals from such a portion of stock equals or exceeds 10% of monthly sales; or has 10% or greater floor area open to and observable by customers used for the display or storage of adult-oriented material, or as presentation time of live or recorded performances, shall be defined as an adult use. Adult uses are subject to the following standards:**[Added 4-10-2002 ATM by Art. 41, AG approval 7-31-2002; amended 4-6-2015 ATM by Art. 64, AG approval 8-5-2015; 4-2-2016 ATM by Art. 58, AG approval 7-12-2016]**

(1) Adult uses shall be located in stand-alone facilities and shall not be allowed within a building or structure containing other retail, commercial, residential, industrial or other uses.

(2) A minimum separation of 300 feet, measured between lot lines, is required between adult uses and state-certified public or private schools or state-licensed day-care centers.

AFFORDABLE HOUSING — Dwelling units restricted to occupancy by families with annual incomes less than 150% of the median annual household income for Nantucket County as determined by the most recent calculation of the U.S. Department of Housing and Urban Development.**[Added 4-12-1994 ATM by Art. 48, AG approval 4-29-1994; amended 4-8-2008 ATM by Art. 57, AG approval 8-18-2008; 4-6-2015 ATM by Art. 64, AG approval 8-5-2015]**

AGRICULTURE — The use of land for agricultural purposes, including farming, dairying, pasturage, apiculture, horticulture, floriculture, viticulture, and animal and poultry husbandry, and the necessary uses for packing, treating and storing the produce.

ALCOHOLIC BEVERAGE SALES — A facility for the retail sale of beer, wine, or other alcoholic beverages for off-premises consumption.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

ALTERATION — Any change in size, shape or use of a building or structure.

ANIMAL FEEDLOT — Land on which 25 or more livestock per acre are kept for the purpose of feeding.

APARTMENT — A dwelling unit located within a commercial structure or detached structures on the same lot with a commercial use. An apartment(s) shall not occupy more than 50% of the first floor area. The Planning Board may by special permit waive this requirement based on a finding that the commercial character of the area will not be negatively impacted by the location of a dwelling unit on the first floor of the commercial structure. A maximum of four apartments are allowed by right in certain districts, subject to the dimensional requirements set forth below. The Planning Board may issue a special permit to allow more than four apartments on larger lots, provided that: (1) the overall number of units shall not exceed the density set forth in the schedule below; and (2) the applicant shall demonstrate through submission of a dimensioned lotting plan that the subject property could be divided into multiple lots pursuant to a conventional subdivision plan without requiring waivers from the Planning Board's Rules and Regulations Governing the Subdivision of Land (as in effect at the time of application):**[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009; amended 4-2-2013 ATM by Art. 30, AG approval 7-26-2013; 4-5-2014 ATM by Art. 66, AG approval 5-7-2014; 4-6-2015 ATM by Art. 64, AG approval 8-5-2015; 11-6-2017 STM by Art. 20, AG approval 2-26-2018]**

(1) CDT — one dwelling unit is permitted for each 1,000 square feet of lot area.

(2) CMI — one dwelling unit is permitted for each 2,000 square feet of lot area.

(3) CN — one dwelling unit is permitted for each 3,000 square feet of lot area.

(4) CTEC — one dwelling unit is permitted for each 4,000 square feet of lot area.

(5) CI — one dwelling unit is permitted for each 5,000 square feet of lot area.

APARTMENT BUILDING(S) — A structure or structures containing a maximum of up to eight bedrooms in up to six dwelling units on a single lot , or an equivalent density, through the issuance of a special permit granted by the Planning Board, for a project, comprised of one or more parcels of land in the same ownership or control, that could be divided into multiple lots on a conventional subdivision plan meeting all dimensional and upland requirements of the bylaw and consistent with the

Rules and Regulations Governing the Subdivision of Land, as may be amended by the Planning Board from time to time, as demonstrated by the submission of a dimensioned lotting plan, with no commercial or other uses, shall be allowed in the following districts:**[Added 4-5-2014 ATM by Art. 68, AG approval 5-7-2014; amended 4-2-2016 ATM by Arts. 36, 60, AG approval 7-12-2016; 11-6-2017 STM by Art. 20, AG approval 2-26-2018]**

(1) CN/VN — one dwelling unit is permitted for each 2,500 square feet of lot area.

(2) CMI — One dwelling unit is permitted for each 1,250 square feet of lot area.

The Planning Board shall be the special permit granting authority.

AQUIFER — A geological formation that stores and transmits significant quantities of recoverable water.

ARCADE — A place or facility where any electric or electronic machine, such as pinball or other similar electronic games, is played for amusement only. Shall not be construed so as to include bingo games, juke boxes, children's mechanical rides (e.g., horses, rocket ships), or machines that sell merchandise nor shall it be construed so as to include gambling devices or any other devices prohibited by law.[2]**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

AUTOMOBILE SERVICE STATION — Any building, structure or land used primarily for the dispersal, sale, or offering for sale of automotive fuels, oils or accessories, including lubrication of automobiles and replacement or installation of minor parts and accessories, but not including major repair work, such as motor replacement or rebuilding, body and fender repair, or painting.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

AVERAGE MEAN GRADE — **[Added 4-12-1994 ATM by Art. 55, AG approval 4-29-1994]**

(1) Average mean grade shall be the average of the mean grades established along the median grade line. There shall be only

2. Editor's Note: The former definition of "assisted-independent-living community," added 4-10-2000 ATM by Art. 27, AG approval 8-2-2000, which immediately followed this definition, was repealed 9-21-2009 STM by Art. 16, AG approval 12-11-2009.

one average mean grade for each continuous median grade line.

(2) Where a side does not have continuous existing and/or finish grade lines, caused by retaining walls or horizontal breaks created by setbacks or protrusions, the average mean grade shall be the average of separately calculated average mean grades for each separate continuous median grade line and shall be proportional to the horizontal length of each continuous median grade line.

BAKERY — An establishment primarily engaged in the retail sale of baked goods for off-site consumption. A bakery may include, as an accessory use, wholesale distribution of goods prepared on the site.[3] **[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009; amended 11-6-2017 STM by Art. 18, AG approval 2-26-2018]**

BUILDING — A structure forming a shelter for persons, animals or property and having a roof. Where the context allows, the word "building" shall be construed as though followed by the words "or part thereof."

BUILDING AND STRUCTURE HEIGHT — **[Added 4-12-1994 ATM by Art. 55, AG approval 4-29-1994; amended 4-12-1999 ATM by Art. 30, AG approval 8-10-1999; 4-2-2016 ATM by Art. 60, AG approval 7-12-2016]**

(1) The height of the building or structure shall be established for each side.

(2) There shall only be one highest point for each building or structure.

(3) No one building and/or structure side shall exceed 32 feet, except in the CDT and CMI Districts, or as otherwise permitted.

(4) Where a side does not have continuous existing and/or finish grade lines, the average mean grade shall be the average of separately calculated average mean grades of each separate continuous median grade line.

BUILDING, DETACHED — A building surrounded by an open space on the same lot.

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3. Editor's Note: The definition of "breezeway," as amended, which immediately followed this definition, was repealed 11-6-2017 STM by Art. 18, AG approval 2-26-2018.

BUILDING ENVELOPE — The sole area on a lot, less than allowed by applicable setback requirements, for the placement of a building or other structures. **[Added 11-13-1990 STM by Art. 19, AG approval 3-19-1991]**

BUILDING COMMISSIONER — The chief official of the Town of Nantucket who is responsible for the administration and enforcement of Code of Massachusetts Regulations 780, State Board Building Regulations and Standards.**[Added 4-10-2000 ATM by Art. 36, AG approval 8-2-2000; amended 4-2-2016 ATM by Art. 60, AG approval 7-12-2016]**

BUILDING INSPECTOR — The Building Commissioner, or his/her designee, otherwise referred to in this chapter as the "Inspector of Buildings." **[Amended 4-10-2000 ATM by Art. 46, AG approval 8-2-2000]**

BUILDING, PRINCIPAL — A nonaccessory building on a lot in which a principal use is conducted.

BULK MERCHANDISE RETAIL — The sale of goods that require a large amount of floor space and which involves goods both warehoused and retailed at the same location. Items for sale include large, categorized products such as household appliances, furniture, construction and lawn equipment, electrical and heating fixtures and supplies, plumbing fixtures and supplies.[4]**[Added 4-2-2013 ATM by Art. 30, AG approval 7-26-2013]**

CATERING SERVICE — An establishment in which food, meals, and incidental services are prepared and then delivered to another location for consumption.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

CLINIC, MEDICAL OR DENTAL — Offices organized as a unified facility by one or more physicians, dentists, chiropractors or other licensed practitioners to provide medical or dental treatment and examination, but not including bed-patient care.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

CLUB — Buildings and facilities, owned or operated by a corporation, association, person or persons, for a social, educational, or recreational purpose, to which membership is required for participation and not primarily operated for profit nor to render a service that is customarily carried on as a

4. **Editor's Note: The definition of "capital improvements," which immediately followed this definition, was repealed 4-6-2015 ATM by Art. 64, AG approval 8-5-2015.**

business.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

COMMERCIAL — As in a trade, occupation, or business, including a transient residential facility, but excluding governmental, religious or private residential uses.

COMMERCIAL WECS — A WECS designed or operated to provide energy principally to consumers located off the premises and does not meet the requirements established for a residential WECS.

CONSTRUCT — To build, erect or assemble. [5]

CONTRACTORS SHOP — An establishment used for the indoor repair, maintenance, or storage of a contractor's vehicles, equipment, or materials, and may include the contractor's business office but which does not use any exterior storage area.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

CONVENIENCE STORE — A retail store offering for sale groceries and household items intended for the convenience of the neighborhood with a floor area of less than 2,500 square feet; does not include automotive service stations or vehicle repair shops.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

COUNTRY OVERLAY DISTRICT — The overlay district described in § 139-12F.[6]**[Added 4-9-2002 ATM by Art. 37, AG approval 7-31-2002]**

DAY-CARE CENTER — Any institution or place which receives for temporary custody, separate and apart from their parents, five or more children not of common parentage, under seven years of age, during part or all of the day, with or without stated educational purposes.

DISPOSAL — Any discharge, deposit, injection, dumping, spilling, leaking or placing so that waste may enter ground or surface water.

DOCK or PIER or WHARF — Each such word shall mean the same for purposes of this chapter, and shall be used interchangeably, either singularly or in the plural, in the conjunctive or in the

5. **Editor's Note: The definition of "construction," which immediately followed this definition, was repealed 4-6-2011 ATM by Art. 64, AG approval 9-15-2011.**

6. **Editor's Note: The definition of "CPI," which immediately followed this definition, was repealed 4-6-2011 ATM by Art. 64, AG approval 9-15-2011, and the definition of "customary home occupation," which immediately followed was repealed 1-8-2001 STM by Art. 5, AG approval 4-10-2001. See now the definition of "home occupation."**

disjunctive, and shall mean any structure, floating or fixed, attached or adjacent to land, and placed in or and extending into coastal inland waters (in the case of tidal waters, seaward of the mean high tide line) which is designed, or is suitable for use, for access to vessels, or for swimming or any other similar recreational, commercial, or educational purpose.[7] **[Added 4-10-2000 ATM by Art. 30, AG approval 8-2-2000]**

DRIVEWAY ACCESS — A vehicular access point onto any public way, private way or any way customarily used by the public for purposes for which a public way is generally used in the Town or County of Nantucket.[8] **[Added 4-9-2001 ATM by Art. 27, AG approval 8-2-2001]**

DUPLEX — A structure containing two dwelling units, but not including primary dwelling with an accessory dwelling unit or tertiary dwelling unit contained therein. In the R-1 District only, both dwelling units shall be in the same ownership. A duplex shall not be construed to include a primary dwelling and secondary dwelling as defined in this chapter.**[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009; amended 4-6-2015 ATM by Art. 64, AG approval 8-5-2015; 11-6-2017 STM by Art. 18, AG approval 2-26-2018]**

DWELLING UNIT — A room or enclosed floor space used, or to be used, as a habitable unit for one family or household, with facilities for sleeping, cooking and sanitation.

ELDER HOUSING FACILITIES — One or more structures used for independent living, assisted living, skilled nursing care, hospice care, and other long-term residential care for persons 55 or older or the disabled. Such structures may be detached dwelling units, attached dwelling units, integrated dwelling units, and/or multiple-bedroom long-term care facilities, as well as associated and ancillary facilities and services.**[Added 4-10-2000 ATM by Art. 27, AG approval 8-2-2000; amended 9-21-2009 STM by Art. 16, AG approval 12-11-2009]**

ELIGIBLE HOUSEHOLD — A household whose total annual income is less than 150% of the median annual household income for Nantucket County as determined by the most recent calculation of the U.S. Department of Housing and Urban Development.**[Amended 11-13-1990 STM by Art. 18, AG**

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7. Editor's Note: The definition of "dormitory housing," added 4-9-2001 ATM by Art. 38, AG approval 8-2-2001, which immediately followed this definition, was repealed 4-8-2008 ATM by Art. 55, AG approval 8-18-2008.

8. Editor's Note: The definition of “dwelling,” which immediately followed this definition, was repealed 4-6-2009 ATM by Art. 27, AG approval 8-10-2009.

approval 3-19-1991; 4-8-2008 ATM by Art. 57, AG approval 8-18-2008]

EMPLOYER DORMITORY — A dwelling on a lot occupied by a legally permitted or nonconforming commercial or nonprofit recreational use, or on an adjoining lot under the same ownership, all located outside of the TOD in which sleeping accommodations for more than five persons are provided by one or more employers, with occupancy limited solely to their employees.**[Amended 4-10-2000 ATM by Art. 31, AG approval 8-2-2000; 4-9-2001 ATM by Art. 37, AG approval 8-2-2001; 4-9-2001 ATM by Art. 38, AG approval 8-2-2001; 4-8-2008 ATM by Art. 55, AG approval 8-18-2008; 4-2-2013 ATM by Art. 30, AG approval 7-26-2013]**

ERECT — To construct or reconstruct or excavate, fill, drain or conduct physical operations of any kind in preparation for or in pursuance of construction or reconstruction; or to move a building or structure upon a lot.

FAMILY — One or more persons occupying a dwelling unit and living as a single household.**[Amended 4-6-2015 ATM by Art. 64, AG approval 8-5-2015]**

FLOOD HAZARD DISTRICT — An overlay district to all other districts. The district includes all special flood hazard zones designated as Zone A, AH, AO, A5-8, V5-8, and the FEMA Flood Boundary and Floodway Map, all of which indicate the one-hundred-year regulatory floodplain on Nantucket's Flood Insurance Rate Map (FIRM), dated July 2, 1992, and issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program (NFIP). Exact boundaries are further defined by the Flood Insurance study booklet dated June 3, 1986. The FIRM, and Flood Insurance Study booklet are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Commissioner, and Conservation Commission. **[Added 5-4-1993 ATM by Art. 44, AG approval 5-24-1993]**

FLOOR AREA, GROSS — The sum of the areas of the several floors of the structure, as measured by the exterior faces of the walls, including fully enclosed porches and the like as measured by the exterior limits thereof, but excluding basement and cellar areas devoted exclusively to uses accessory to the operation of the structure; and areas devoted to housing mechanical equipment customarily located in the basement or cellar, such

as heating and air-conditioning equipment, plumbing, electrical equipment, and residential laundry facilities.

FOOD PROCESSING ESTABLISHMENT — Manufacturing establishments that produce or process foods for consumption. Includes: (1) bakery products, sugar and confectionery products primarily for wholesale distribution, but not including a "bakery" as herein defined; (2) dairy products processing; (3) fats and oil products (including rendering plants); (4) fruit and vegetable canning, preserving, and related processing; (5) grain mill products and by-products; (6) meat, poultry, and seafood canning, curing, and byproduct processing; and (7) distilleries.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008; amended 11-6-2017 STM by Art. 18, AG approval 2-26-2018]**

FORMULA BUSINESS — A type of retail sales establishment, restaurant, tavern, bar, or take-out food establishment which is under common ownership or control or is a franchise, and is one of 10 or more other businesses or establishments worldwide maintaining two or more of the following features:**[Added 4-4-2006 ATM by Art. 42, AG approval 10-26-2006; amended 4-2-2013 ATM by Art. 31, AG approval 7-26-2013]**

(1) Standardized menu or standardized array of merchandise with 50% or more of in-stock merchandise from a single distributor bearing uniform markings.

(2) Trademark or service mark, defined as a word, phrase, symbol or design, or a combination or words, phrases, symbols or designs, that identifies and distinguishes the source of the goods from one party from those of others, on products or as part of store design, such as cups, napkins, bags, boxes, wrappers, straws, store signs or advertising devices.

(3) Standardized color scheme used throughout the interior or exterior of the establishment, including, but not limited to, graphics, awnings, signage, and the like visible from the exterior of the structure.

(4) Standardized interior decor, including, but not limited to, style of furniture, wall coverings, permanent fixtures, displays, window treatments.

(5) Standardized uniform, including but not limited to aprons, pants, shirts, smocks or dresses, hat, and pins (other than name tags).

FRONTAGE — The lineal extent of the boundary between a lot and an abutting street measured along a single street line affording legal and practical access to the lot. For a lot abutting two or more streets, frontage is measured along any single street line of the lot. Frontage shall not include jogs in street width, backup strips and other irregularities in street line, such as at a turning "T" or hammerhead turnaround or street-width change.

GARAGE — A building for covered shelter of one or more motor vehicles. A garage shall be for vehicle parking at grade, or for commercial storage, repair, washing, painting or other servicing of motor vehicles. The Planning Board shall be the special permit granting authority for residential garages serving as a primary use on a lot.**[Amended 4-2-2013 ATM by Art. 30, AG approval 7-26-2013]**

GARAGE APARTMENT — A dwelling unit located within a residential or commercial garage. The dwelling unit shall not exceed 150% of the gross floor area of the garage. If located on the same lot as a primary dwelling unit, the following requirements shall be applicable:**[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009; amended 4-6-2011 ATM by Art. 64, AG approval 9-15-2011]**

(1) Both dwelling units shall be in the same ownership unless one of the two dwelling units is subject to the NHNC. The ownership of a lot by a condominium cooperative housing corporation, land trust, or other common interest ownership entity in which there is a separate beneficial ownership of the primary dwelling and garage apartment on the lot shall not be deemed to constitute "the same legal and beneficial ownership."

(2) The Planning Board shall make a determination regarding the adequacy of access to the lot and structures prior to the issuance of a building permit. Planning Board approvals granted after April 8, 1996, shall be valid for a period of two years from the date of plan endorsement.

GROUND COVER — The horizontal area of a lot covered at grade by structures, together with those portions of any overhangs which contain enclosed interior space; excluding, for instance, tents, retaining walls, substantially below grade finished or unfinished space, exterior insulation, decks, unenclosed porches, unenclosed roofed overhangs and connectors, entryway hoods and projections, gazebos, pergolas, play structures, platforms and steps, docks, game playing courts at grade, exterior in-

ground residential swimming pools, exterior in-ground or above grade hot tub/spas, chimneys, bulkheads, bay and bow windows, window wells, unenclosed breezeways, air conditioning units, generators and generator enclosures, mechanical and utility equipment unroofed walled enclosures, exterior showers, fuel tanks, roof eaves, trash bins, and detached sheds not exceeding 200 square feet in ground cover and 16 feet in height, as measured from the top of the slab, pier, or crawl space foundation.**[Added 4-15-2003 ATM by Art. 48, AG approval 8-27-2003; amended 4-5-2014 ATM by Art. 68, AG approval 5-7-2014; 4-6-2015 ATM by Art. 64, AG approval 8-5-2015; 11-6-2017 STM by Art. 18, AG approval 2-26-2018; 4-1-2019 ATM by Art. 49, AG approval 8-6-2019; 4-1-2019 ATM by Art. 56, AG approval 8-6-2019]**

GROUND COVER RATIO — The ground cover upon a lot divided by the area of the lot, expressed as a percentage.**[Amended 4-12-1999 ATM by Art. 29, AG approval 8-10-1999; 4-15-2003 ATM by Art. 48, AG approval 8-27-2003]**

HAZARDOUS OR TOXIC MATERIALS — Liquid hydrocarbon products, including but not limited to residual oil, gasoline, fuel oil, diesel oil and any other toxic, caustic or corrosive chemicals, radioactive materials and other substances defined as being hazardous or toxic by the Massachusetts Division of Hazardous Waste under the provisions of MGL c. 21C and c. 21E. **[Amended 5-4-1993 ATM by Art. 42, AG approval 5-24-1993]**

HEALTH SPA — A place or building where massage, beauty treatment, cosmetic procedures, and related activities take place.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

HISTORICAL HIGH WATER TABLE — The highest groundwater elevation that is likely to occur at a given location, based on calculations made in accordance with the high groundwater methodology specified in the U.S.G.S. Water Resource Investigations Circular #83-4112 by Frimpter et al., and any subsequent revisions. **[Added 4-14-1997 ATM by Art. 48, AG approval 8-18-1997]**

HOME OCCUPATION — An occupation, trade, profession, or business activity conducted as an accessory use wholly or partly within a dwelling unit or in one or more accessory structures.**[Added 1-8-2001 STM by Art. 5, AG approval 4-10-2001; amended 4-6-2009 ATM by Art. 27, AG approval 8-10-2009]**

(1) Home occupations shall be subject to the following requirements:

(a) The home occupation shall be conducted by occupants of a dwelling upon the lot, and not more than one additional worker who is not an occupant of a dwelling upon the lot.

(b) There shall be no exterior storage of material or equipment, unless effectively screened by a wall, fence or densely planted vegetative buffer.

(c) The gross floor area used in connection with the home occupation shall not exceed 800 square feet, not more than 200 square feet of which shall be used for retail sales.

(d) The home occupation, as projected, shall not generate an average daily traffic generation during the months of June through September that exceeds 14 vehicle trips per day.

(e) A use permit shall be obtained from the Building Commissioner for the home occupation.

(f) There shall be no retail sales except of commodities prepared, crafted or otherwise produced upon the lot.

(2) Special permit relief. A special permit may be granted by the special permit granting authority for a home occupation (including multiple home occupations upon the same lot, collectively) which employs more than one nonresident of the lot, or which conducts retail sales in a gross floor area exceeding 200 square feet, provided that all of the other requirements are met and the criteria for the granting of a special permit under § 139-30 are met, and a home occupation for which a special permit is granted hereunder shall be subject to the provisions for minor site plan review under § 139-23.[9]

HOSPITAL — A health care facility providing patient treatment with specialized staff and equipment, including, but not limited to, bed-patient care, medical testing facilities, wellness center, rehabilitation facilities, medical offices (i.e., medical clinic), and ancillary facilities customarily associated with a hospital such as a helicopter landing pad, employee housing, maintenance facilities, retail sale of convenience and gift related items, and

9. **Editor's Note: The former definition of "household," which immediately followed this definition, was repealed 4-6-2015 ATM by Art. 64, AG approval 8-5-2015.**

cafeteria and food services. A hospital shall be exempt from § 139-11.**[Added 4-6-2015 ATM by Art. 70, AG approval 8-5-2015]**

HOT TUB/SPA — A structure designed to be used for recreational purposes accessory to a principal use, either above or below grade, containing water more than 24 inches in depth and less than 150 square feet of water surface area. This shall not include ornamental ponds, decorative water features, including, but not limited to, fountains, bird baths, and the like.**[Added 11-6-2017 STM by Art. 18, AG approval 2-26-2018]**

HOTEL — A building or buildings on a lot containing a commercial kitchen and rental sleeping units without respective kitchens, primarily the temporary abode of persons who have a permanent residence elsewhere.**[Amended 4-6-2009 ATM by Art. 27, AG approval 8-10-2009]**

IMPERVIOUS — For the purpose of enforcing the provisions of the Public Wellhead Recharge District, the term "impervious" shall mean those surfaces which will result in little or no infiltration of stormwater through underlying soil layers. Surfaces such as concrete, bituminous concrete, brick, or similar interlocking surfaces which have no interstitial gaps or openings shall be considered impervious. The designated review authority shall determine whether alternative paving surfaces which have interstitial openings can be deemed to reduce the impervious coverage of a lot. **[Added 4-14-1997 ATM by Art. 48, AG approval 8-18-1997]**

INCLUSIONARY UNIT — Any rental dwelling unit required pursuant to § 139-11J restricted to employee occupancy.[10]**[Amended 11-13-1990 STM by Art. 18, AG approval 3-19-1991; 4-14-1997 ATM by Art. 48, AG approval 8-18-1997; 4-6-2015 ATM by Art. 64, AG approval 8-5-2015]**

JUNK YARD — A structure or lot used in connection with a business for collection, storage, or sale of waste or scrap materials.**[Added 4-5-2014 ATM by Art. 68, AG approval 5-7-2014]**

KENNEL — A building for the boarding for pay or hire of four or more dogs.

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10. Editor's Note: The former definition of "independent living cottages," added 4-10-2000 ATM by Art. 27, AG approval 8-2-2000, which immediately followed this definition, was repealed 9-21-2009 STM by Art. 16, AG approval 12-11-2009.

LANDSCAPE CONTRACTOR — A business engaged in the decorative and functional alteration, planting, and maintenance of grounds. Such a business may engage in the installation and construction of underground improvements but only to the extent that such improvements (e.g., drainage facilities) are accessory to the principal business and are necessary to support or sustain the landscaped surface of the ground.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

LARGE SCALE GROUND-MOUNTED SOLAR PHOTOVOLTAIC INSTALLATION — A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted and has a minimum nameplate capacity of 250 kW DC.**[Added 4-1-2019 ATM by Art. 62, AG approval 8-6-2019]**

LIGHT MANUFACTURING — An establishment engaged in the indoor manufacturing, processing, or fabrication of materials or products.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

LODGING, ROOMING OR GUEST HOUSE — A building or buildings on a lot containing rental sleeping units without respective kitchens, and not having a commercial kitchen, primarily the temporary abode of persons who have a permanent residence elsewhere.**[Amended 4-6-2009 ATM by Art. 27, AG approval 8-10-2009]**

LOT — A tract of land in common ownership, including land under water, not divided by a street, which may include multiple parcels of adjacent land in common ownership to the extent necessary to eliminate or minimize zoning nonconformities. However, two or more adjacent parcels in common ownership, each of which complies with all applicable zoning requirements, or each of which has been lawfully improved with one or more dwellings conforming to all applicable zoning requirements, if any, at the time of construction thereof, and each of which parcels was in compliance with area and frontage requirements applicable thereto at the time of such construction, shall be considered to be separate lots for all purposes under this chapter, notwithstanding any subsequently effective amendment to this chapter. **[Amended 4-12-1994 ATM by Art. 50, AG approval 4-29-1994]**

LOT AREA — The horizontal area of the lot exclusive of any area in a street or private way open to the public use or land seaward of the mean high tide line of any harbor, sound, ocean or estuary. For any lot created after November 14, 1990, 90% of

the minimum lot area required for the zoning district in which such lot is situated must be exclusive of areas subject to the protection under the Wetlands Protection Act, MGL c. 131, § 40, not including areas defined as land subject to coastal storm flowage, coastal flooding or inundation, or any area defined as a buffer zone under such statute. In addition, for any lot created after April 5, 2011, the wetlands defined in the local Wetlands Bylaw, Chapter 136 of the Code of the Town of Nantucket, shall also apply, not including areas defined as land subject to coastal storm flowage, coastal flooding or inundation, or any area defined as a buffer zone under such statute.**[Amended 11-13-1990 STM by Art. 16, AG approval 3-19-1991; 5-5-1992 ATM by Art. 36, AG approval 8-3-1992; 4-4-2011 ATM by Art. 60, AG approval 9-15-2011]**

LOT LINE — A line bounding a lot, including a street line or an interior line which divides the lot from another lot, or a natural boundary line for a lot.

LUMBERYARD — A facility where building materials such as lumber, plywood, drywall, cement blocks, roofing materials, insulation, and the like, including related products such as wallpaper, plumbing and electrical supplies, paint, glass, and hardware, are stored and sold.**[Added 4-2-2013 ATM by Art. 30, AG approval 7-26-2013]**

MAJOR COMMERCIAL DEVELOPMENT — See § 139-11.

MARIJUANA ESTABLISHMENT, RECREATIONAL — A marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business as defined in MGL c. 94G, § 1, and 935 CMR 500.00, unless otherwise defined in this section. Recreational marijuana establishments are subject to the following standards:**[Added 11-6-2017 STM by Art. 2, AG approval 2-26-2018; amended 10-10-2018 STM by Art. 1, AG approval 8-6-2019]**

(1) Recreational marijuana establishments shall be located in standalone facilities and shall not be allowed within a building or structure containing other retail, commercial, residential, industrial, or other uses, except for colocation with a licensed medical marijuana treatment center.

(2) A minimum separation of 500 feet, measured between lot lines, is required between recreational marijuana establishments and state-certified public or private schools or state-licensed day-care centers.

(3) Except where co-located, a minimum separation of 2,000 feet, measured between lot lines, is required between recreational marijuana establishments.

(4) No building permit for a recreational marijuana establishment shall issue until the applicant has executed a host community agreement with the Town pursuant to MGL c. 94G, § 3(d).

(5) A recreational marijuana establishment shall be required to obtain an annual certificate of inspection issued by the Inspector of Buildings.

(6) A recreational marijuana retailer must operate and provide all storage within a permanent structure.

(7) A recreational marijuana establishment shall not be eligible for qualification as a home occupation.

(8) On-site consumption of marijuana products is prohibited.

(9) Delivery of cannabis products to consumers is prohibited.

(10) A special permit for a recreational marijuana establishment shall be limited to the applicant at the time of special permit issuance. Any changes to the owner/operator/licensee shall require a new special permit.

(11) A recreational marijuana establishment shall not generate outside odors from the processing or manufacturing of marijuana or marijuana products.

(12) An applicant for a special permit for a recreational marijuana establishment shall obtain a provisional license from the Cannabis Control Commission prior to submitting an application to the Planning Board for a special permit.

MARIJUANA MEMBERSHIP CLUB — An organization, club, lodge, other private grounds allowing on-site consumption of cannabis or marijuana products, but not operating as a licensed marijuana social consumption operator and where no sales occur.**[Added 10-10-2018 STM by Art. 1, AG approval 8-6-2019]**

MARIJUANA PRODUCTS — Cannabis or marijuana and its products unless otherwise indicated and as defined in MGL c. 94G, § 1, as may be amended. These include products that have been manufactured and contain cannabis or an extract from cannabis or marijuana, including concentrated forms of

marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.**[Added 10-10-2018 STM by Art. 1, AG approval 8-6-2019]**

MARIJUANA TREATMENT CENTER, MEDICAL — A premises approved under a medical use marijuana license pursuant to MGL c.94I that acquires, cultivates, processes, transports, sells, distributes, dispenses or administers marijuana for the benefit of registered qualifying patients in the treatment of debilitating medical conditions or the symptoms thereof. Medical marijuana treatment centers are subject to the following standards:**[Added 11-6-2017 STM by Art. 2, AG approval 2-26-2018]**

(1) Medical marijuana treatment centers shall be located in standalone facilities and shall not be allowed within a building or structure containing other retail, commercial, residential, industrial, or other uses, except for co-location with a licensed recreational marijuana establishment.

(2) A minimum separation of 500 feet, measured between lot lines, is required between medical marijuana treatment centers and state-certified public or private schools or state-licensed day-care centers.

(3) No building permit for a medical marijuana treatment center shall issue until the applicant has executed a Host Community Agreement with the Town pursuant to MGL c.94G, § 3(d).

MARITIME SERVICE STATION — A marine establishment which may include, but not be limited to, boat fuel sales, boat sales, boat rental, boat construction, boat maintenance, repair, and incidental painting, and marine equipment sales or rental.**[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009]**

MEAN GRADE — The median grade line established between existing grade and finish grade measured along a line four feet from the perimeter of the building or structure, extended four feet beyond the building or structure at each end. **[Amended 4-12-1994 ATM by Art. 55, AG approval 4-29-1994]**

MEANS OF ACCESS — A way affording vehicular access to a lot and across the line of the way [or lot line, for lots within the scope of § 139-33E(1)(b) below] and having sufficient width, suitable grades and adequate construction to provide for the year-round needs of vehicular traffic in relation to the way's prospective use

and for the installation of utility services.[11]**[Amended 5-5-1992 ATM by Art. 44, AG approval 8-3-1992]**

MINING — The removal of any geologic material, including but not limited to topsoil, sand, gravel and clay, not to include removal associated with on-site road and building construction.[12]

MOTOR VEHICLE PARKING LOTS OR STRUCTURES — A commercial use dedicated to exterior or interior vehicular parking. Motor vehicle parking lots or structures that are constructed to meet the off-street parking requirements of § 139-18 of this chapter shall not be considered a separate use from the use requiring the off-street parking.**[Added 4-2-2016 ATM by Art. 60, AG approval 7-12-2016]**

MUNICIPAL — Of or by the Town of Nantucket, the County of Nantucket, or any agency, board or department thereof; and specifically including the Nantucket Islands Land Bank.**[Added 4-6-2015 ATM by Art. 66, AG approval 8-5-2015]**

NANTUCKET HOUSING NEEDS COVENANT-OWNERSHIP FORM — Shall mean a covenant affecting the title to real property, created pursuant to Chapter 100 of the Code of the Town of Nantucket, which relates to and regulates the terms of the purchase, sale and ownership of real property not held as a condominium (the "NHNC-Ownership Form").**[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009]**

NEIGHBORHOOD EMPLOYEE HOUSING — Housing for the exclusive use of employers who own or lease space on a lot, for the purpose of housing their employees, their spouses, domestic partners and dependents. A maximum of two dwelling units shall be permitted per lot with occupancy limited to a total of 18 persons. In the R-1, ROH, R-5, R-10, R-20, and R-40 Districts only, there shall be no more than two lots containing neighborhood employee housing or employer dormitory units (conforming or preexisting nonconforming), within a 1,000 foot radius. The Planning Board shall be the special permit granting authority.

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11. Editor's Note: The former definition of "medical marijuana treatment center," which immediately followed this definition, was amended 4-5-2014 ATM by Art. 68 to become "registered marijuana dispensary," which was repealed 11-6-2017 STM by Art. 2, AG approval 2-26-2018.

12. Editor's Note: The former definition of "motel," which immediately followed this definition, was repealed 4-6-2009 ATM by Art. 27, AG approval 8-10-2009. The former definition of "multi-family dwelling," added 4-10-2000 ATM by Art. 33, AG approval 8-2-2000, as amended, which also followed this definition, was repealed 4-2-2013 ATM by Art. 30, AG approval 7-26-2013. The former definition of "moderately priced housing," which also followed this definition, added 4-12-1994 ATM by Art. 48, AG approval 4-29-1994, and amended 4-8-2008 ATM by Art. 29, AG approval 8-18-2008, was repealed 4-6-2015 ATM by Art. 64, AG approval 8-5-2015.

Site plan review in accordance with § 139-23 and the submission of a dormitory management plan shall be required.**[Added 4-9-2001 ATM by Art. 37, AG approval 8-2-2001; amended 4-2-2013 ATM by Art. 30, AG approval 7-26-2013]**

NONCONFORMING STRUCTURE, USE OR LOT — A structure or a use or lot that does not conform to a zoning restriction of this chapter for the zoning district in which it is located, provided that the nonconformity was lawfully in existence on the July 27, 1972, effective date of this chapter, or in the case of a structure, use or lot made nonconforming by an amendment of this chapter, on the effective date of such amendment.[13]

OFFICE — The building, room or building space where the clerical work of a business, trade or occupation, or profession is conducted or where the work of administration is conducted. Commercial office space shall not include any trading in merchandise or manufacturing or fabricating.

OPEN AIR MARKET — An occasional or periodic market held in an open area or in a structure where groups of individual sellers licensed by the Board of Selectmen offer for sale to the public such items as fresh produce, seasonal fruits, fresh flowers, arts and crafts items, and food and beverages (but not to include second-hand goods) dispensed from booths located on-site.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

OPEN LAND — A parcel or parcels of land or an area of water or wetlands or a combination of land and water or wetlands, not including streets, set aside in an undeveloped state.

ORIGINAL LOT — An existing lot, dividable into two lots pursuant to § 139-8C.**[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009; amended 4-2-2016 ATM by Art. 54, AG approval 7-12-2016]**

OUTBUILDING(S) — Detached accessory residential structure(s) such as a cabana, barn, hoop barn, shanty, greenhouse, gazebo, playhouse, fitness studio, home office, but not including dwelling units or structures used for habitation, studios, or sheds.**[Added 4-2-2013 ATM by Art. 30, AG approval 7-26-2013]**

OWNER OCCUPIED — The primary residence, or temporary (seasonal) residence, of a person(s) or the individual beneficiaries of a legal entity that holds title to the property, where such

13. **Editor's Note: The definition of "occupied," which immediately followed this definition, was repealed 4-6-2015 ATM by Art. 64, AG approval 8-5-2015.**

persons are physically present and living within dwelling units on said property for at least three months each calendar year. Properties owned by corporations and the like, time sharing interval dwelling units, or where all units are made available for rent do not qualify as owner occupied.**[Added 4-6-2015 ATM by Art. 62, AG approval 8-5-2015]**

OWNERSHIP — Record title to land, as shown upon deeds or other documents of title on file at the Nantucket Registry of Deeds, the Nantucket Registry District of the Land Court, the Registries of Probate, or other applicable public offices.**[Added 4-6-2015 ATM by Art. 65, AG approval 8-5-2015]**

PARKING SPACE — An area dedicated to the parking of a motor vehicle meeting the requirements of § 139-18.**[Added 4-9-2001 ATM by Art. 27, AG approval 9-2-2001; amended 4-6-2015 ATM by Art. 64, AG approval 8-5-2015]**

PARKING SPACE: TANDEM/STACKED — A group of two or more parking spaces arranged one behind the other where one space blocks access to the other space.**[Added 4-15-2003 ATM by Art. 30, AG approval 8-27-2003]**

PERSONAL SERVICES — Establishments providing services generally related to personal non-medical needs, including, but not limited to: beauty and barber, clothing rental, garment repair, and shoe repair shops, tanning salons, photography studios, psychic reading, tattoo or body piercing studio, upholster shop, personal training. These uses may also include accessory retail sales of products related to the services provided. No personal service establishment shall exceed 3,000 square feet of floor area, and the aggregation of such service establishments on a lot (or on contiguous lots in one ownership) shall not exceed 4,000 square feet of floor area.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008; amended 4-6-2009 ATM by Art. 27, AG approval 8-10-2009; 4-6-2015 ATM by Art. 64, AG approval 8-5-2015]**

PERSONAL WATERCRAFT — A small vessel of less than 16 feet in length which uses an inboard motor powering a waterjet pump or a propeller as its primary source of motive power and that is designed to be operated by a person sitting, standing or kneeling on the vessel rather than the conventional manner of sitting or standing inside a vessel. This term includes jet skis, wet bikes and surf jets.**[Added 4-8-2008 ATM by Art. 49, AG approval 8-18-2008]**

PHARMACY — An establishment engaged in the retail sale of prescription drugs, nonprescription medicines, home and personal care products, and related supplies.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

PRIMARY DWELLING — A detached single-family dwelling unit or the portion of a structure that contains a single dwelling unit. A primary dwelling may contain an attached garage.[14]**[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009; amended 4-6-2011 ATM by Art. 64, AG approval 9-15-2011]**

PRINT SHOP — A retail establishment that provides duplicating services using photocopying, blueprint, and offset printing equipment and may include the collating and binding of booklets and reports.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

QUALIFIED FAMILY MEMBER DEED RESTRICTION — A deed restriction accepted and enforceable by the town of Nantucket, which limits owner-occupancy of a subject lot to the owner of the lot at the time the lot was subdivided into secondary lots, or the owner's spouse, and/or their parent(s), grandparent(s), children, brother(s) and/or sister(s). This deed restriction shall only be released by the Town in the event that an NHNC Ownership Form replaces this restriction.**[Added 4-1-2019 ATM by Art. 48, AG approval 8-6-2019]**

RECHARGE — The addition of water to the saturated zone of an aquifer. **[Added 4-14-1997 ATM by Art. 48, AG approval 8-18-1997]**

RECREATIONAL FACILITY — Golf courses, tennis, paddle, and racquet courts, bowling alleys, fitness centers, or the like, including any uses ancillary to the recreational facility. In the R-10 District only, the recreational facility may include accessory uses such as a restaurant, catering facility, snack bar, or pro shop that operate independently from the recreational facility.[15]**[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009]**

RESIDENTIAL WECS — A WECS designed or operated to provide energy principally to the residence and accessory structures

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14. Editor's Note: The former definition of "primary lot," added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009, which immediately followed this definition, was repealed 4-2-2016 ATM by Art. 54, AG approval 7-12-2016.

15. Editor's Note: The former definition of "registered marijuana dispensary," added 4-2-2013 ATM by Art. 30, as amended, which immediately followed this definition, was repealed 11-6-2017 STM by Art. 2, AG approval 2-26-2018. See now the definitions of "marijuana establishment, recreational" and "marijuana treatment center, medical."

located on the lot, or on contiguous lots held in common ownership. A WECS designed or operated to provide more than 50% of its rated energy production for off-site consumption shall not be considered residential except in cases where such power is consumed by residences of adjacent property or within 1,000 feet, whichever is greater.**[Amended 4-6-2009 ATM by Art. 47, AG approval 8-10-2009]**

SECONDARY DWELLING — A detached single-family dwelling unit located on the same lot as a primary dwelling unit. The ground cover of the secondary dwelling shall be a minimum of 20% less or more than the primary dwelling. The secondary dwelling may contain an attached garage. The primary and secondary dwelling must be separated by a minimum distance of 10 feet, measured at grade at the closest point between the dwellings; excluding retaining walls, window wells, platforms, decks, and steps, chimneys, bulkheads, bay windows, bow windows, roof eaves and overhangs, air conditioning units, a maximum of two aboveground fuel tanks not to exceed 120 gallons each, trash bins, and fences. Relief from the ground cover and scalar separation requirements of this definition may be granted by a special permit issued by the Planning Board subject to a finding that the reduced separation is in harmony with the general purpose and intent of this chapter. A secondary dwelling may only be attached to the primary dwelling by a breezeway.**[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009; amended 4-5-2010 ATM by Art. 56, AG approval 8-5-2010; 4-6-2011 ATM by Art. 64, AG approval 9-15-2011; 4-2-2013 ATM by Art. 40, AG approval 7-26-2013; 11-6-2017 STM by Art. 18, AG approval 2-26-2018; 4-3-2018 ATM by Art. 45; AG approval 7-18-2018]**

Both dwelling units shall be in the same ownership unless one of the two dwelling units is subject to the NHNC. The ownership of a lot by a condominium cooperative housing corporation, land trust, or other common interest ownership entity in which there is a separate beneficial ownership of the principal and secondary dwellings on the lot shall not be deemed to constitute "the same legal and beneficial ownership."

The Planning Board shall make a determination regarding the adequacy of access to the lot and structures prior to the issuance of a building permit. Planning Board approvals granted after April 8, 1996, shall be valid for a period of two years from the date of plan endorsement.

The principal purpose of secondary dwellings is to create housing opportunities through the provision of affordable rental housing for year round residents, including senior citizens, while affording the owner of the primary residence with the opportunity to generate supplemental income. The intent of this provision is also that one of the two dwellings be designated and constructed at such scale and bulk so as to be clearly subordinate in both use and appearance.

Notwithstanding any language contained herein to the contrary, any property that is owned by a validly created and existing cooperative housing corporation as of December 31, 2012, may be converted to a residential condominium form of ownership, maintaining the separate beneficial ownership of the primary and secondary dwellings, without subjecting such property to the Nantucket Housing Needs Covenant.[16]

SECONDARY LOTS — Lots created by the division of the original lot into two lots pursuant to § 139-8C. One of the two lots shall be subject to an NHNC-Ownership Form, or shall be owner-occupied by a qualified family member, in which case the lot shall be subject to the NHNC-Ownership Form, except for the established income and asset limits, or shall be subject to a qualified family member deed restriction.**[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009; amended 4-2-2016 ATM by Arts. 54, 55, AG approval 7-12-2016; 4-1-2019 ATM by Art. 48, AG approval 8-6-2019]**

SHED — An accessory structure for storage purposes, not designed to be served by heat or plumbing and not to be used for habitation.**[Added 4-2-2013 ATM by Art. 30, AG approval 7-26-2013]**

SHOREFRONT LAND — A parcel or parcels of land, a portion of which is located within or abutting the mean high water line of the Atlantic Ocean, Nantucket Sound, Nantucket Harbor, Polpis Harbor, or Madaket Harbor.[17]**[Added 4-13-1998 ATM by Art. 35, AG approval 7-31-1998]**

SOLAR ENERGY FACILITIES — All of the equipment, machinery, and structures used for either the primary or accessory purpose of converting, storing or transmitting electricity generated from solar energy.**[Added 4-1-2019 ATM by Art. 62, AG approval 8-6-2019]**

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16. **Editor's Note: See Ch. 100, Nantucket Housing Needs Covenant Program.**

17. **Editor's Note: The former definition of "sign," which immediately followed this definition, was repealed 4-6-2011 ATM by Art. 64, AG approval 9-15-2011.**

SOLID WASTE — Discarded solid material with insufficient liquid content to be free flowing, including but not limited to rubbish, garbage, scrap material, junk, refuse and inert fill material.

SPECIAL PERMIT GRANTING AUTHORITY — The Board of Appeals except in those matters for which the Planning Board is specified as having jurisdiction under this chapter.

STABLE, PRIVATE — An accessory building in which horses are kept for private use, not for a fee, hire or sale.

STABLE, PUBLIC — An accessory building in which any horses are kept for a fee, hire or sale.

STORAGE CONTAINER — An outdoor container, such as fully enclosed semi-trailers, steel shipping containers, cargo containers, and the like, used for commercial storage of goods and materials that are not registered vehicles themselves or situated on a registered trailer or attached to a registered vehicle. This definition does not apply to registered or unregistered boat trailers, registered vehicles or sheds.**[Added 11-6-2017 STM by Art. 21, AG approval 2-26-2018]**

STREET —

(1) A public way or a way which the Town Clerk certifies is maintained and used as a public way; or

(2) A way shown on a plan approved and endorsed by the Nantucket Planning Board in accordance with the Massachusetts Subdivision Control Law[18] and which has been improved and constructed in accordance with the requirements of such approval; or

(3) A way in legal and physical existence when the Subdivision Control Law[19] became effective on Nantucket on February 1, 1955, which has sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon and served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. **[Amended 5-5-1992 ATM by Art. 44, AG approval 8-3-1992; 11-6-2017 STM by Art. 18, AG approval 2-26-2018]**

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18. Editor's Note: See MGL c. 41, § 81K et seq.

19. Editor's Note: See MGL c. 41 § 81K et seq.

STREET LINE — The line separating a street from a lot as duly determined by matters of record.

STRUCTURE — Anything constructed or erected, the use of which requires a fixed location on the ground. "Structure" shall be construed, where the context allows, as though followed by the words "or part thereof" and shall include, but not be limited to, buildings, retaining walls which support buildings, platforms, antenna towers, steel storage containers, lighthouses, docks, decks, chimneys, tents, and game courts. "Structure" shall not include retaining walls not exceeding four feet in height for landscaping purposes, fences, rubbish bins, underground propane tanks, stairs, access ramps, or platforms that provide the minimum Building Code compliant access to a structure and that extend into the required front, side, or rear yard setback less than a depth of three feet, and within a total area less than 20 square feet on a lot containing less than 40,000 square feet, and a maximum of two aboveground propane tanks not to exceed 120 gallons each.**[Amended 4-8-2008 ATM by Art. 63, AG approval 8-18-2008; 4-4-2011 ATM by Art. 58, AG approval 9-15-2011; 11-6-2017 STM by Art. 18, AG approval 2-26-2018; 4-1-2019 ATM by Art. 57, AG approval 8-6-2019]**

STUDIO — A building or a room or rooms where an artist, artisan, photographer or the like does his or her work.

SUPERMARKET — Stores where most of the floor area is devoted to the sale of food products for home preparation and consumption, which typically also offer other home and personal care products, and which are substantially larger and carry a broader range of merchandise than convenience stores or pharmacies.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

SWIMMING POOL - COMMERCIAL — A structure designed to be used for recreational purposes, either above or below grade, containing water more than 24 inches in depth and exceeding150 square feet of water surface area, or exceeding 1,000 gallons. This shall not include ornamental ponds, decorative water features, including, but not limited to, fountains, bird baths, and the like. The swimming pool may be a primary use or accessory use to a club, recreational facility, transient residential facility, yacht/sailing club, or other commercial use as identified in § 139-7A.**[Added 4-4-2011 ATM by Art. 58, AG approval 9-15-2011]**

SWIMMING POOL - RESIDENTIAL — A structure designed to be used for recreational purposes, either above or below grade, containing water more than 24 inches in depth and exceeding 150 square feet of water surface area, or exceeding 1,000 gallons. This shall not include ornamental ponds, decorative water features, including, but not limited to, fountains, bird baths, and the like. The swimming pool must be located on the same or contiguous lot as a residential dwelling or constructed for the benefit of a group of residences, such as a multifamily development, subdivision, or in conjunction with a neighborhood association. In the VR District only, the Zoning Board of Appeals, acting as the special permit granting authority, may grant a special permit to allow a residential swimming pool on a lot, subject to the following criteria being met: (1) the lot must meet or exceed the minimum lot size for the district, and (2) side and rear yard setbacks of 20 feet shall apply to the residential swimming pool and associated mechanical equipment.**[Added 4-4-2011 ATM by Art. 58, AG approval 9-15-2011; amended 4-1-2017 ATM by Art. 69, AG approval 5-31-2017]**

TAKE-OUT FOOD ESTABLISHMENT — A commercial establishment, the primary business of which is the sale of food and/or beverages, including but not limited to ice cream, sandwiches, pastries, prepared meals for consumption on or off the premises which is: **[Amended 4-12-1999 ATM by Art. 31, AG approval 8-10-1999]**

(1) Primarily intended for immediate consumption rather than for use as an ingredient or component of meals;

(2) Available upon a short waiting time; and

(3) Packaged or presented in such a manner that it can be readily consumed outside the premises where it is sold.

TAKE-OUT STATION — A designated area within a take-out food establishment where a cash register or other means of taking and processing orders is located.**[Added 3-31-2012 ATM by Art. 56, AG approval 7-12-2012]**

TAXICAB BUSINESS — A service that offers transportation utilizing three or more motor vehicles to persons, including those who are handicapped, in return for remuneration.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

TENT — A portable enclosure constructed of fabric, plastic, or a similar pliable material supported by one or more poles and secured by pegs in the ground. Tents shall not be erected for

periods exceeding 30 days per calendar year; however, tents which in the aggregate exceed 150 square feet shall not be erected for more than three events per year or periods exceeding nine days per year, whichever is less, on properties where the principal use is residential unless a special permit from the Board of Appeals has been issued based on a determination that the use is ancillary to the residential use of the property and not a commercial use.**[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009]**

TERTIARY DWELLING**[Added 4-6-2015 ATM by Art. 62, AG approval 8-5-2015; amended 4-2-2016 ATM by Art. 51, AG approval 7-12-2016]** —

(1) The tertiary dwelling shall be in the same ownership as at least one other owner-occupied dwelling unit on the lot, or shall be owned by a not-for-profit, religious, or educational entity, or shall be subject to a restriction limiting occupancy to a year-round household.

(2) A third dwelling unit located on a lot, including the following options:

(a) A garage apartment not exceeding 650 square feet of gross floor area.

(b) A dwelling unit attached to or within a single-family dwelling, duplex, or an outbuilding or a dwelling unit attached to a studio or shed. When a tertiary dwelling unit is the third dwelling unit, within a single structure, a special permit issued by the Planning Board is required. **[Amended 4-1-2019 ATM by Art. 49, AG approval 8-6-2019]**

(c) A detached building containing not more than 650 square feet of ground cover and not more than 650 square feet of gross floor area.

(3) In the R-5, R-10, and R-20 Districts, a maximum of eight bedrooms per lot shall be permitted at the following density:

(a) R-5: 1 bedroom per each 1,000 square feet of lot area;

(b) R-10: 1 bedroom per each 1,400 square feet of lot area;

(c) R-20: 1 bedroom per each 2,500 square feet of lot area;

(4) Any waivers from the standards contained within Subsection (2) or (3) of this definition may be granted through the issuance of a special permit by the Planning Board.

(5) The Planning Board shall make a determination regarding the adequacy of access to the lot and structures prior to the issuance of a building permit. Planning Board approvals shall be valid for a period of two years from the date of plan endorsement.

TIME-SHARING OR TIME-INTERVAL-OWNERSHIP DWELLING UNIT OR DWELLING — A dwelling unit or dwelling in which the exclusive right of use, possession or ownership circulates among various owners or lessees thereof in accordance with a fixed or floating time schedule on a periodically recurring basis, whether such use, possession or occupancy is subject to either: a time-share estate, in which the ownership or leasehold estate in property is devoted to a time-share fee (tenants in common, time-share ownership, interval ownership) and a time-share lease; or time-share use, including any contractual right of exclusive occupancy which does not fall within the definition of "time-share estate," including, but not limited to, a vacation license, prepaid hotel reservation, club membership, limited partnership or vacation bond, the use being inherently transient.

TINY HOUSE UNIT — A detached structure containing a dwelling unit with less than a total of 500 square feet constructed on a moveable trailer to be attached to a foundation pursuant to a building permit issued in accordance with Zoning Bylaw § 139-26. Only one tiny house unit shall be allowed per lot. The tiny house unit shall not be a recreational vehicle (commonly known as an RV), auto home, shipping container, motor vehicle, semi-trailer, camper, or boat, and shall not be located upon a lot with a commercial or other nonresidential use. The tiny house unit shall be owned by a not-for-profit, religious, or educational entity or shall be the primary residence of a person(s), or the individual beneficiary(ies) of a legal entity, that holds title, common title, or land lease to the property, or any direct family member of that person(s) (their child, parent, grandparent, or brother or sister, or their spouse's child, parent, grandparent, brother or sister). A tiny house unit may be a primary dwelling unit or may be located on a lot in lieu of an otherwise permitted secondary dwelling, garage apartment, or tertiary dwelling. If located on a lot with a primary dwelling, secondary dwelling, or garage apartment, the Planning Board shall make a determination regarding the adequacy of access to the lot and structures prior to the issuance

of a building permit. Planning Board approvals shall be valid for a period of two years from the date of plan endorsement.**[Added 4-2-2016 ATM by Art. 52, AG approval 7-12-2016]**

TOWN OVERLAY DISTRICT — The overlay district described in § 139-12E. **[Added 4-9-2002 ATM by Art. 37, AG approval 7-31-2002]**

TRANSFER STATION — A handling facility where solid waste is brought, stored and transferred from one vehicle or container to another vehicle or container for transport off-site to a solid waste treatment, processing or disposal facility.**[Added 4-8-2008 ATM by Art. 62, AG approval 8-18-2008]**

TRANSIENT RESIDENTIAL FACILITIES — Hotels; rooming, lodging or guest houses; and time-sharing or time-interval-ownership dwelling unit(s). In the ROH District only, rooming, lodging, and guest houses may be allowed by special permit for lots located entirely within a quarter-mile radius of the CDT District.**[Amended 4-6-2009 ATM by Art. 47, AG approval 8-10-2009; 4-6-2015 ATM by Art. 44, AG approval 8-5-2015]**

TRUCK/BUS TERMINAL — A facility for the receipt, transfer, short-term storage, or dispatching of goods transported by truck or the storage, service, or maintenance of buses not in active transport of passengers. Included in the use type would be express and other mail and package distribution facilities, including such facilities operated by the U.S. Post Office.[20]**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

UNENCLOSED PORCH — An unenclosed appendage, whether roof covered or not, projecting from an exterior wall(s) of a structure. An unenclosed porch may connect portions of a single building, roof, or two or more buildings.**[Added 11-6-2017 STM by Art. 18, AG approval 2-26-2018]**

USE, PRINCIPAL — A use which is expressly permitted by this chapter (other than as an accessory use), either with a special permit or without need of one.

WATER-DEPENDENT USE — Uses and facilities that require direct access to or location in coastal waters and which therefore cannot be located inland, including uses that provide general public access to those waters.**[Added 4-8-2008 ATM by Art. 49, AG approval 8-18-2008]**

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20. Editor's Note: The former definition of "used," which immediately followed this definition, was repealed 4-6-2015 ATM by Art. 64, AG approval 8-5-2015.

WIND ENERGY CONVERSION SYSTEMS (WECS) — Mechanisms, including all appurtenances thereto, designed or operated for the purpose of converting wind energy to electrical or mechanical power.

WINDMILL — A mill operated by the wind's rotation of large, oblique sails or vanes radiating from a shaft, used as a source of power.

WORKFORCE HOMEOWNERSHIP HOUSING — Ownership or rental of single-family dwelling units, pursuant to § 139-8D, where at least 25% of the total dwelling units are restricted to occupancy by households earning at or below the percentages of area median income set forth herein. An increment of 75% of the total 25% of the restricted units shall be restricted to occupancy by households earning at or below 80% of area median income. The remaining increment of 25% of the total 25% of the restricted units shall be restricted to occupancy by households earning at or below 175% of area median income.**[Added 11-9-2015 STM by Art. 2, AG approval 12-29-2015]**

WORKFORCE RENTAL HOUSING — Rental of multifamily dwelling units, pursuant to § 139-8D, where at least 25% of the total dwelling units are restricted to occupancy by households earning at or below 80% of area median income.**[Added 11-9-2015 STM by Art. 2, AG approval 12-29-2015]**

YARD — The area of a lot to be kept free of buildings and other structures (except fences, fence gates, landscape retaining walls, mail and lamp posts, utility service poles, and pedestals, lot accessways, and docks, bulkheads, groins and other coastal engineering structures). The setback distance from any required front, side, or rear yard shall be measured from the corner board of the structure, if applicable, or the closest point (excluding the eaves and any exterior insulation) between the structure and the lot line.**[Amended 4-2-2016 ATM by Art. 60, AG approval 7-12-2016; 4-1-2019 ATM by Art. 49, AG approval 8-6-2019]**

YARD, FRONT — The yard extending from the street line of a lot inwardly the required front-yard setback distance. For lots abutting two or more streets or ways, whether constructed or not, the required front yard setback shall be maintained from one street or way, and the required side yard setback shall be maintained from each other lot line, except in the R-1 and RC-2 Districts, where a minimum ten-foot side yard setback shall be maintained from any other street or way, whether constructed or not. For lots abutting one street or way, whether constructed or

not, on more than one side or portion thereof, the Planning Board may grant a waiver by special permit to allow the required side yard or rear yard setback to be maintained from such portion of the lot as the Planning Board determines to be consistent with the purpose of this definition.**[Amended 11-13-1990 STM by Art. 22, AG approval 3-19-1991; 5-5-1992 ATM by Art. 45, AG approval 8-3-1992; 4-1-2019 ATM by Art. 59, AG approval 8-6-2019]**

YARD, REAR or SIDE — The portion of any lot lying between the buildings upon such lot and each lot line other than a line adjoining a street.

ZONE II — The area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated. For the purposes of this chapter, the Zone II is coterminous with the Public Wellhead Recharge District established under § 139-12B of this chapter. **[Added 4-14-1997 ATM by Art. 48, AG approval 8-18-1997]**

ZONING ENFORCEMENT OFFICER — An official of the Town of Nantucket who is responsible for the administration and enforcement of the Nantucket Zoning Bylaw in accordance with the provisions of MGL c. 40A, § 7. **[Added 4-10-2000 ATM by Art. 46, AG approval 8-2-2000]**

B. Word usage. "Shall" is considered mandatory and not discretionary.

Addendum E

139 Attachment 2

Town of Nantucket
Use Chart
(See § 139-7A.)
[Amended 4-6-2009 ATM by Art. 27, AG approval 8-10-2009; 4-4-2011 ATM by Arts. 58 and 61, AG approval 9-15-2011; 3-31-2012 ATM by Art. 47, AG approval 7-12-2012; 4-2-2013 ATM by Art. 30, AG approval 7-26-2013; 4-5-2014 ATM by Art. 67, AG approval 5-7-2014; 4-6-2015 ATM by Arts. 44, 47, 61, 62, 64, AG approval 8-5-2015; 11-9-2015 STM by Art. 2, AG approval 12-29-2015; 4-2-2016 ATM by Art. 36, 52, AG approval 7-12-2016; 4-1-2017 ATM by Art. 69, AG approval 5-31-2017; 11-6-2017 STM by Arts. 2, 19, 21, AG approval 2-26-2018; 10-10-2018 STM by Art. 2, AG approval 5-8-2019; 4-1-2019 ATM by Art. 49, AG approval 8-6-2019]

A = Accessory Use as defined in § 139-15
FBED = Formula Business Exclusion District
N = No
SP = Special Permit issued by Zoning Board of Appeals, unless the Planning Board is designated as the special permit granting authority pursuant to another section of this chapter.
Y = Yes

	Use	Town Residential Districts						Town Commercial Districts							Country Residential Districts					Country Commercial Districts	
		R-1 SR-1	ROH SOH	R-5 R-5L	R-10 R-10L SR-10	R-20 SR-20	R-40	CDT	CMI	CN	CTEC	CI	RC	RC-2	V-R	LUG-1	LUG-2	LUG-3	MMD	VN	VTEC
Residential	Primary dwelling	Y	Y	Y	Y	Y	Y	A	A	A	Y	N	Y	Y	Y	Y	Y	Y	Y	A	A
	Secondary dwelling	Y	Y	Y SP R-5L	Y SP R-10L	Y	Y	Y	N	N	N	N	Y	Y	Y	Y	Y	Y	N	N	N
	Accessory dwelling	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y
	Tertiary dwelling	N	N	Y R-5 N R-5L	Y R-10 N R-10L N SR-10	Y R-20 N SR-20	Y	N	N	N	N	N	N	N	N	Y	Y	Y	N	N	N
	Apartment	N	N	N	N	N	N	Y	Y	Y	Y	SP	N	N	N	N	N	N	N	N	N
	Apartment building	N	N	N	N	N	N	N	SP	SP	N	N	N	N	N	N	N	N	N	SP	N
	Tiny house unit	N	N	Y R-5 N R-5L	Y R-10 N R-10L N SR-10	Y R-20 N SR-20	Y	N	N	N	N	N	N	N	N	Y	Y	Y	N	N	N
	Garage apartment	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
	Duplex	Y R-1 N SR-1	N	Y N R-5L	Y R-10 N R-10L N SR-10	N	N	Y	Y	A	Y	N	Y	Y	N	N	N	N	N	N	N
	Workforce rental community	N	N	N	N	N	N	N	SP	SP	N	N	N	N	N	N	N	N	N	N	N
	Elder housing facilities	SP	SP	SP	SP	SP	SP	N	SP	SP	N	N	SP	SP	SP	SP	SP	SP	N	N	N
	Studio	A	A	A	A	A	A	Y	Y	Y	Y	Y	Y	Y	A	A	A	A	A	Y	Y
	Garage – residential	A/SP	A/SP	A/ SP	A/SP	A/SP	A/SP	N	N	A	A	N	A	A	A/ SP	A	A	A/SP	A	A	A
	Shed	A	A	A	A	A	A	N	N	A	A	A	A	A	A	A	A	A/SP	A	A	A
	Outbuildings – other	A	A	Y	Y	A	A	N	N	A	A	A	A	A	A	A	A	A/SP	A	A	A
	Swimming pool - residential	A	N	A	A	A	A	A	A	A	A	N	A	A	SP	A	A	A	SP	A	A
	Home occupations	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

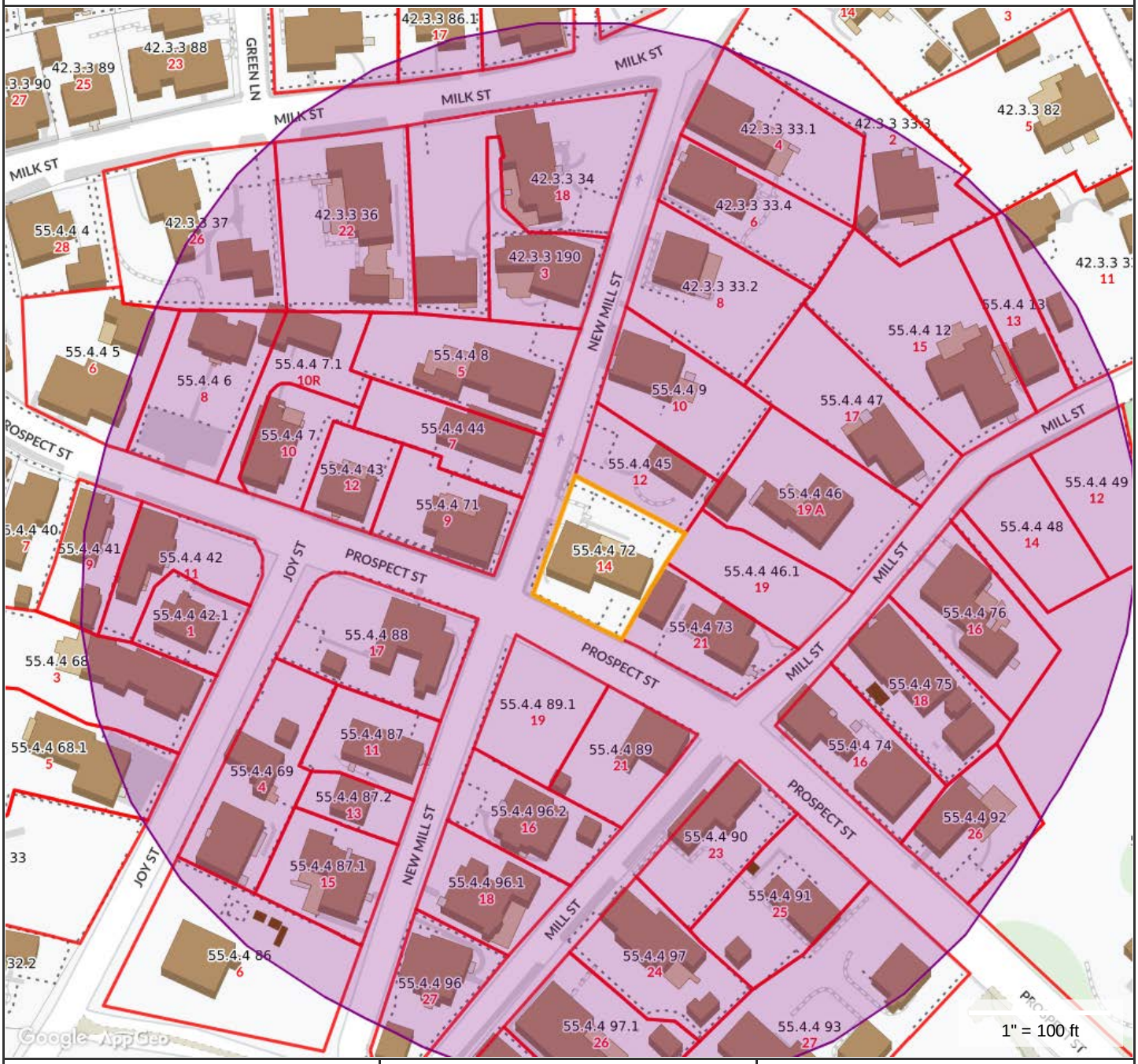
	Use	Town Residential Districts						Town Commercial Districts							Country Residential Districts					Country Commercial Districts	
		R-1 SR-1	ROH SOH	R-5 R-5L	R-10 R-10L SR-10	R-20 SR-20	R-40	CDT	CMI	CN	CTEC	CI	RC	RC-2	V-R	LUG-1	LUG-2	LUG-3	MMD	VN	VTEC
	Keeping of pets for personal use	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Business Commercial	Retail sales	N	N	N	N	N	N	Y	Y	Y	A	A	Y	Y	N	N	N	N	N	Y	A
	Convenience store	N	N	N	N	N	N	Y	Y	Y	N	N	Y	Y	N	N	N	N	N	SP	A
	Alcohol sales	N	N	N	N	N	N	Y	Y	SP/A	N	N	Y	Y	N	N	N	N	N	A	A
	Bakery	N	N	N	N	N	N	Y	Y	Y	Y	SP	SP/A	SP/A	N	N	N	N	N	Y	A/SP
	Open-air market	N	N	N	N	N	N	Y	Y	Y	N	N	Y	Y	N	N	N	N	N	Y	Y
	Pharmacy	N	N	N	N	N	N	Y	Y	Y	N	N	Y	Y	N	N	N	N	N	N	N
	Supermarket	N	N	N	N	N	N	Y	Y	SP	N	N	Y	Y	N	N	N	N	N	N	N
	Restaurants																				
	Small (up to 70 seats)	N	N	N	N	N	N	Y	Y	SP	N	N	Y	Y	N	N	N	N	N	SP	N
	Large (71-200 seats)	N	N	N	N	N	N	SP	SP	N	N	N	Y	Y	N	N	N	N	N	N	N
	Take-out food establishment	N	N	N	N	N	N	Y	Y	SP/A	N	N	SP	SP	N	N	N	N	N	A	N
	Drive-through take-out food	N	N	N	N	N	N	N	N	SP	N	N	SP	SP	N	N	N	N	N	N	N
	Tavern/Bar	N	N	N	N	N	N	Y	Y	SP/A	N	N	SP	SP	N	N	N	N	N	A	A
	Formula businesses																				
	Retail (includes: bakery, convenience store and pharmacy)	N	N	N	N	N	N	N	Y	Y	N	SP	SP/N in FBED	SP	N	N	N	N	N	N	N
	Supermarket	N	N	N	N	N	N	Y	Y	Y	N	N	Y	Y	N	N	N	N	N	N	N
	Restaurant																				
	Small (up to 70 seats)	N	N	N	N	N	N	N	SP	SP	N	N	SP/N in FBED	N	N	N	N	N	N	N	N
	Large (71-200 seats)	N	N	N	N	N	N	N	SP	N	N	N	SP/N in FBED	N	N	N	N	N	N	N	N
	Take-out food establishment	N	N	N	N	N	N	N	SP	SP	N	N	Y/N in FBED	N	N	N	N	N	N	N	N
	Tavern/Bar	N	N	N	N	N	N	N	SP	SP	N	N	Y/N in FBED	N	N	N	N	N	N	N	N
	Offices	N	N	N	N	N	N	Y	Y	Y	A	Y	Y	Y	N	N	N	N	N	Y	A
	Theatres, auditoriums, or other places of public assembly	N	N	N	N	N	N	Y	SP	SP	N	N	Y	Y	N	N	N	N	N	A	A/SP
	Personal services	SP	SP	SP N R-5L	SP N R-10L	SP	SP	Y	Y	Y	A	N	Y	Y	N	N	N	N	N	Y	SP
	Print shop	N	N	N	N	N	N	Y	Y	Y	Y	Y	SP	SP	N	N	N	N	N	N	N
	Laundromat or dry-cleaning establishment	N	N	N	N	N	N	SP	SP	SP	SP	SP	SP	SP	N	N	N	N	N	SP	N
	Bank	N	N	N	N	N	N	Y	Y	Y	N	N	Y	Y	N	N	N	N	N	N	N
	Automated teller machine	N	N	N	N	N	N	Y/A	Y/A	Y/A	N	N	Y	Y	N	N	N	N	N	A	A
	Arcade	N	N	N	N	N	N	N	SP/A	SP/A	N	N	A	A	N	N	N	N	N	N	N
	Art gallery	N	N	N	N	N	N	Y	Y	Y	N	N	SP	SP	N	N	N	N	N	Y	Y
	Museum	N	N	N	N	N	N	Y	N	SP	N	N	Y	Y	N	N	N	SP	N	SP	N
	Catering	N	N	N	N	N	N	N	Y	Y	Y	SP	SP/A	SP/A	N	N	N	N	N	A	A
	Crematorium	N	N	N	N	N	N	N	N	N	N	Y	A	A	N	N	N	SP	N	N	N
	Funeral home	SP	SP	SP N R-5L	SP N R-10L	N	N	Y	Y	Y	N	Y	Y	Y	N	N	N	N	N	N	N
	Health spa	N	N	N	N	N	N	Y	Y	Y	N	N	Y	Y	N	N	N	N	N	N	N
	Medical clinic	N	N	N	N	N	N	N	SP	SP	N	N	Y	Y	N	N	N	N	N	N	N
	Adult on-site marijuana social consumption operator	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
	Marijuana membership club	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
	Marijuana establishment, recreational and marijuana treatment center, medical	N	N	N	N	N	N	N	N	SP	N	SP	N	N	N	N	N	N	N	N	N

	Use	Town Residential Districts						Town Commercial Districts							Country Residential Districts					Country Commercial Districts	
		R-1 SR-1	ROH SOH	R-5 R-5L	R-10 R-10L SR-10	R-20 SR-20	R-40	CDT	CMI	CN	CTEC	CI	RC	RC-2	V-R	LUG-1	LUG-2	LUG-3	MMD	VN	VTEC
	Hospital	N	N	N	N	N	N	N	N	Y	N	N	N	N	N	N	N	N	N	N	N
	Transient residential facilities																				
	Hotel or inn	N	N	N	N	N	N	SP	SP	SP	N	N	Y	N	N	N	N	N	N	N	N
	Rooming, lodging, or guest house	N	SP[1]	N	N	N	N	Y	Y	Y	N	N	Y	N	N	N	N	N	N	SP	N
	Time-sharing/Interval dwelling units	N	N	N	N	N	N	Y	Y	Y	N	N	Y	N	N	N	N	N	N	Y	N
Commercial Industrial	Contractor shop	N	N	N	N	N	N	N	SP	SP	Y	Y	SP	SP	N	N	N	N	N	N	A
	Lumberyard	N	N	N	N	N	N	N	N	SP	SP	Y	N	N	N	N	N	N	N	N	SP
	Bulk merchandise retail	N	N	N	N	N	N	Y	Y	Y	SP	Y	N	N	N	N	N	N	N	SP	SP
	Landscape contractor	N	N	N	N	N	N	N	N	SP	Y	Y	SP	SP	N	N	N	N	N	N	SP
	Light manufacturing	N	N	N	N	N	N	N	N	A	SP/A	Y	SP	SP	N	N	N	N	N	SP/A	SP/A
	Food processing	N	N	N	N	N	N	N	N	SP	SP	Y	SP	SP	N	N	N	N	N	N	SP
	Shed - commercial	N	N	N	N	N	N	A	A	A	A	A	N	N	N	N	N	N	N	A	A
	Storage container	N	N	N	N	N	N	N	N	SP	SP	SP	N	N	N	N	N	N	N	N	N
	Interior or exterior storage or warehousing	N	N	N	N	N	N	N	N	A	SP/A	Y	SP	SP	N	N	N	N	N	A	SP/A
	Motor vehicle sales	N	N	N	N	N	N	N	SP	SP	N	SP	SP	SP	N	N	N	N	N	N	N
	Motor vehicle rental	N	N	N	N	N	N	Y	N	SP	N	SP	SP	SP	N	N	N	N	N	N	N
	Motor vehicle repair or painting	N	N	N	N	N	N	N	SP	SP	SP	Y	SP	SP	N	N	N	N	N	N	N
	Motor vehicle service station	N	N	N	N	N	N	N	SP	SP	SP	SP	SP	SP	N	N	N	N	N	N	N
	Motor vehicle parking lots or structures	N	N	N	N	N	N	Y	Y	Y	SP	SP	Y	Y	N	N	N	N	N	N	N
	Car wash	N	N	N	N	N	N	N	SP	N	N	SP	SP	SP	N	N	N	N	N	N	N
	Taxicab business	N	N	N	N	N	N	N	Y	Y	Y	N	SP	SP	N	N	N	N	N	N	N
	Bicycle rental or sale	N	N	N	N	N	N	Y	N	SP	SP	N	SP	SP	N	N	N	N	N	SP	A
	Maritime service station	N	N	N	N	N	N	Y	Y	Y	Y	Y	Y	Y	N	N	N	N	N	N	SP
	Yacht/Sailing clubs and marinas	N	N	N	N	N	N	Y	N	N	N	SP	Y	Y	N	N	N	N	N	N	SP
Industrial	Adult uses	N	N	N	N	N	N	N	N	N	N	SP	N	SP	N	N	N	N	N	N	N
	Asphalt/Batching plant	N	N	N	N	N	N	N	N	N	N	Y	N	N	N	N	N	N	N	N	N
	Licensed junkyard	N	N	N	N	N	N	N	N	N	N	SP	N	N	N	N	N	N	N	N	N
	Transfer station	N	N	N	N	N	N	N	N	N	N	SP	N	N	N	N	N	N	N	N	N
	Petroleum product storage or distribution facility (i.e. tank farm)	N	N	N	N	N	N	N	N	N	N	Y	N	N	N	N	N	N	N	N	N
	Utility production/distribution (does not include WECS)	N	N	N	N	N	N	SP	SP	SP	SP	Y	N	N	N	N	N	N	N	N	N
	Mining	N	N	N	N	N	N	N	N	N	N	Y	N	N	N	N	N	N	N	N	N
	Truck/Bus terminal	N	N	N	N	N	N	N	N	N	SP	Y	N	N	N	N	N	N	N	N	N
	Boat-related storage	N	N	N	N	N	N	N	N	SP	Y	Y	Y	Y	N	N	N	N	N	N	SP

	Use	Town Residential Districts						Town Commercial Districts							Country Residential Districts					Country Commercial Districts	
		R-1 SR-1	ROH SOH	R-5 R-5L	R-10 R-10L SR-10	R-20 SR-20	R-40	CDT	CMI	CN	CTEC	CI	RC	RC-2	V-R	LUG-1	LUG-2	LUG-3	MMD	VN	VTEC
Other	Preservation of a lot in its natural condition	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
	Care and propagation of fish and shellfish	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
	All agricultural uses allowed by Ch. 590 of the Acts of 1989, effective 3-8-1990 (including keeping of farm animals, greenhouses, truck gardens, farms, orchards and nurseries)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
	Cemeteries	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
	Municipal uses (any)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
	Tents	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
	Day-care center	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
	Kennel	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP
	Public stable	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP
	Employer dormitory	N	N	N	N	N	N	N	N	N	N	N	N	N	SP	SP	SP	SP	N	SP	SP
	Neighborhood employee housing	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	N	N	N	N	N	N	N
	Swimming pool - commercial	N	N	N	N	N	N	N	SP/A	SP/A	A	N	SP/A	SP/A	A	A	A	A	N	A	A
	Recreational facilities	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP
	Club	N	N	N	SP	SP	SP	Y	Y	Y	Y	N	Y	Y	N	SP	SP	SP	N	SP	SP

NOTES:
[1]See the definition of "transient residential facility" in § 139-2A.

Addendum F



MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

Town and County of Nantucket, MA makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 11/13/2018
Data updated 11/19/2018

Materials Provided by Staff to Supplement Application

Handbook of Massachusetts Land Use and Planning Law

THIRD EDITION

MARK BOBROWSKI

Wolters Kluwer
Law & Business

motion to intervene and a motion to amend by adding plaintiffs is purely formal. . . ."[33] The fact that the original plaintiff may not have had standing is not a reason for denying an amendment to allow the substitution of parties who have standing.[34]

Where a motion to intervene or amend is allowed, the party introduced "is, for all intents and purposes, an original party."[35] Thus, the short statute of limitations is ignored for added parties. Intervention has been allowed as late as the post-judgment stage of trial, where the intervener moved as soon as he learned of his omission from the appeal.[36]

§ 11.02 GROUNDS FOR APPEALS

Original applicants, aggrieved persons, and municipal boards or officers may appeal the decision to grant or withhold a special permit or variance, the decision to uphold or reverse an enforcement action by the building inspector, or the failure of the granting authority to take final action within the statutory time limit.

It is not the purpose of this section to restate all of the various procedural and substantive issues providing grounds for appeal. However, **Table 11-1** should prove helpful in assessing procedural defects associated with special permits, variances, and administrative appeals.

§ 11.03 JUDICIAL REVIEW OF ZONING DECISIONS—THRESHOLD ISSUES

[A] Standing

Mass. Gen. L. ch. 40A, § 17,[37] provides, in pertinent part, that:

> [a]ny person aggrieved by a decision of the board of appeals or any special permit granting authority, whether or not previously a party to the proceeding, or

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[33] Rafferty v. Sancta Maria Hosp., 5 Mass. App. Ct. 624, 628 (1977).

[34] Quimby v. Zoning Bd. of Appeals of Arlington, 19 Mass. App. Ct. 1005, 1007 (1985). *See also* Cummings v. City Council of Gloucester, 28 Mass. App. Ct. 345, 349-350 (1990); *Rafferty*, 5 Mass. App. Ct. at 626-627.

[35] *Rafferty*, 5 Mass. App. Ct. at 628.

[36] Butts v. Zoning Bd. of Appeals of Falmouth, 18 Mass. App. Ct. 249, 254 (1984). *See also* Muldoon v. Board of Appeals of Watertown, 351 Mass. 702 (1966) (suggesting that the lapse of time caused by a plaintiff's failure to join a necessary party cannot make that party's motion for relief untimely).

[37] The Subdivision Control Act, Mass. Gen. L. ch. 41, § 8IBB, also requires a showing of aggrieved status to obtain judicial review. The principles that guide standing under the Zoning Act are readily transferable to the realm of subdivision control. *See* Carey v. Planning Bd. of Revere, 335 Mass. 740, 743 (1957); Reagan v. Planning Bd. of Braintree, 37 Mass. App. Ct. 956 (1994); Windsor v. Planning Bd. of Wayland, 26 Mass. App. Ct. 650, 655 (1988); Southwick v. Planning Board of Plymouth, 72 Mass. App. Ct. 266 (2008).

TABLE 11-1
PROCEDURAL DEFECTS

Requirement	*Defect*	*Text Reference*	*Likely Result*
Application must be correctly categorized	Applicant requires administrative appeal but applies for variance	§ 10.03[D]	Remand
	Applicant requires variance but applies for special permit *and* variance	§ 10.03[D]	No error
	Applicant requires special permit but applies for administrative appeal	§ 10.03[D]	No error
Application for variance or special permit must be filed with town clerk	Failure to file	§ 10.03[G]	No error
Notice of public hearing	Failure to include required information pursuant to Mass. Gen. L. ch. 40A, § 11 or erroneous notice	§ 10.05[A]	Remand
	Failure to correctly publish notice in newspaper	§ 10.05[B]	Remand
	Failure to correctly post notice	§ 10.05[C]	Remand
	Failure to provide proper mailed notice to party in interest	§ 10.05[D]	Remand if prejudicial
	Notice mailed by person other than granting authority	§ 10.05[D]	Remand
Public Hearing	Failure to hold variance or special permit hearing within 65 days	§ 10.06[A]	Not fatal unless delay prejudicial
	Hearing held on election or primary day	§ 10.06[A]	Remand
	Board member not present at all sessions of continued hearing votes	§ 10.06[B][1]	Remand
	Hearing continued but no new information received at subsequent session	§ 10.06[B][4]	Constructive approval a possibility
Timing of decision	Special permit decision not filed with town clerk within 90 days of close of public hearing	§ 10.07[A]	Constructive approval
	Variance decision not rendered within 100 days of filing of application	§ 10.07[A]	Constructive approval

Contents of decision	Special permit awarded without findings for all criteria in local regulations	§ 9.04	Remand
	Variance awarded without findings for all statutory criteria	§ 8.03	Remand
Filing of decision	Special permit: Failure to file within 14 days of decision	§ 10.07[E]	Constructive approval if not within 90 days of close of public hearing
	Variance: Failure to file within 14 days of decision	§ 10.07[E]	Constructive approval if more than 114 days after filing of application
	Failure to file copy of decision and plans with planning board	§ 10.07[E]	Not fatal
Notice of decision	Failure to provide certified copy of decision to owner/ applicant	§ 10.07[F]	Not fatal
	Failure to provide notice forthwith to parties in interest	§ 10.07[F]	Not fatal
Drafting and filing of complaint	Failure to file within 20 days of decision	§ 11.01[E]	Fatal error unless defect in notice of public hearing
	Failure to name necessary party defendant	§ 11.01[A]	Not fatal unless prejudicial
	Failure to attach certified copy of decision	§ 11.01[C]	Not fatal
	Failure to state jurisdiction	§ 11.01[D]	Not fatal
Notice of appeal	Failure to file notice with town clerk within 20 days of filing of decision	§ 11.01[B]	Fatal error
	Failure to include copy of complaint	§ 11.01[B]	Not fatal
	Filing only copy of complaint with town clerk	§ 11.01[B]	Not fatal
Service of complaint	Failure to provide notice and copy of complaint to defendants within 14 days of filing	§ 11.01[F]	Not fatal unless prejudicial
Affidavit of service	Failure to file affidavit with court within 21 days of filing of complaint	§ 11.01[F]	Not fatal

> any municipal officer or board[38] may appeal to the . . . court . . . by bringing an action within twenty days after the decision has been filed in the office of the city or town clerk.

As far back as the 1933 codification of the Zoning Enabling Act,[39] only "persons aggrieved" have been granted standing to maintain an action in the appropriate courts.

The first decision of the Supreme Judicial Court to explore the nuances of the "person aggrieved" requirement was *Circle Lounge & Grille v. Board of Appeal of Boston*.[40] The Supreme Judicial Court fashioned a two-part approach to the question of standing. First, a person aggrieved must be "one whose legal rights have been infringed."[41] In essence, the party claiming standing must show some special injury. The Appeals Court stated this test more succinctly in *Harvard Square Defense Fund v. Planning Board of Cambridge*:[42] "Individual or corporate property owners acquire standing by asserting a plausible claim of a definite violation of a private right, a private property interest, or a private legal interest."[43] As a general principle, "[t]he words 'person aggrieved' . . . are not to be narrowly construed."[44]

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[38] In Planning Board of Marshfield v. Zoning Board of Appeals of Pembroke, 427 Mass. 699, 703 (1998), the Supreme Judicial Court ruled that the statute "grants standing only to those municipal boards that have duties relating to the building code or zoning within the same town as the subject land." Thus, a board in one town may not appeal the decision of a board in a neighboring town under the "municipal officer or board" clause of the statute. The Court did not decide whether a board in a neighboring city or town might qualify as a "person aggrieved" to obtain standing. *See also* Planning Bd. of Norwell v. Planning Board of Scituate, Misc. Case No. 237791 (Land Ct. 1998); Town Council of Franklin v. Zoning Bd. of Appeals of Bellingham, Misc. Case No. 248310 (Land Ct. 1998). However, in Board of Selectmen of Pembroke v. Pembroke Zoning Board of Appeals, Misc. Case No.: 353249 (2008), standing was awarded to the selectboard where municipal property abutted the site proposed for a comprehensive permit. In Dowling v. Board of Health of Chilmark, 28 Mass. App. Ct. 547, 548 (1990), the Appeals Court expressed reservations about the standing of the board of health in a zoning dispute. Also, a single member of a larger board cannot claim standing to challenge a permit decision under this clause of § 17. *See* Harvard Square Defense Fund v. Planning Bd. of Cambridge, 27 Mass. App. Ct. 491, 496 (1989). Franklin v. Zoning Bd. of Appeals of Bellingham, Misc. Case No. 248310 (Land Ct. 1998). In United States of America v. Drucker, et al., Misc. Case No.: 382185 (Land Ct. 2009), the Land Court ruled that the United States did not have standing to appeal the decision of the Wellfleet Zoning Board of Appeals "on behalf of the public interest."

[39] *See* 1933 Mass. Acts 268, § 1.

[40] 324 Mass. 427 (1949).

[41] *Circle Lounge*, 324 Mass, at 430.

[42] 27 Mass. App. Ct. 491, 492, 493 (1989).

[43] *Id.* at 492-493.

[44] Marotta v. Board of Appeal of Revere, 336 Mass. 199, 204 (1957). As a reflection of its libera interpretation of "person aggrieved" status, the Appeals Court has held that tenants are not barred per se, from claiming standing. Quimby v. Zoning Bd. of Appeals of Arlington, 19 Mass. App. Ct 1005, 1006 (1985). Nor is the owner of an individual condominium unit. Bernstein v. Chief Building Inspector, 52 Mass. App. Ct. 422, 427 (2001). The parallel standing provision of the Subdivision Control Law, *see* Mass. Gen. L. ch. 41, § 81BB, has been interpreted to allow mortgagees and purchasers with equitable interests to claim standing. Carey v. Planning Bd. of Revere, 35 Mass

The second prong of the standing test requires an analysis of the "peculiar legal rights . . . intended to be given to the plaintiff by the statute permitting an appeal."[45] Few decisions turn on this second prong, but several cases hold that the prevention of injury from business competition is not within the purposes of the Zoning Act.[46] Similarly, the Court has held that the Zoning Act does not protect "a proprietor in a less restricted zone . . . [from] the introduction into a more restricted zone of any uses permitted in the zone in which the proprietor's property is located."[47] The Court has taken an ad hoc approach to other

740, 743 (1957). *See also* 39 Joy Street Condo. Ass'n v. Board of Appeals of Boston, 426 Mass. 485 (1997) (owner of condominium unit in Boston has standing to seek variance).

On the other hand, the Court has proposed several rules to limit standing. Parties claiming injury in fact may be restricted by the "linear limitation" intimated in Boston Edison Co. v. Boston Redev. Auth., 374 Mass. 37, 63 n.17 (1977) (the Court expressed "grave doubts about granting standing to any person whose property interest is approximately 1800 feet . . . away from the site" in issue). The Court has been consistently hostile to standing for corporations without a demonstration of some harm to corporate legal rights. An unincorporated association cannot gain standing to be a party to a lawsuit. Several cases have involved ad hoc "citizens groups" seeking standing to challenge permit decisions. *Harvard Square Defense Fund*, 27 Mass. App. Ct. at 495, 496; Chongris v. Board of Appeals of Andover, 17 Mass. App. Ct. 999 (1984); Amherst Growth Study Comm'n v. Board of Appeals of Amherst, 1 Mass. App. Ct. 826, 827 (1973). "A statement of organizational purpose cannot clothe a civic association with aggrieved person status." *Id.* at 827. The organization must locate individual plaintiffs with aggrieved person status to carry the ball. *Harvard Square Defense Fund*, 27 Mass. App. Ct. at 496. It is not necessary for the judge to determine that all of the named plaintiffs have standing, as long as one of the plaintiffs qualifies. Murray v. Board of Appeals of Barnstable, 22 Mass. App. Ct. 473, 476 n.7 (1986).

While the phrase "person aggrieved" will not be narrowly construed, "[i]t [is] not enough [to] have . . . a general civic interest in the enforcement of the zoning ordinance." Waltham Motor Inn v. LaCava, 3 Mass. App. Ct. 210, 218 (1976) (citing Amherst Growth Study Comm'n, Inc. v. Board of Appeals of Amherst, 1 Mass. App. Ct. 826 (1973). *See also* Green v. Board of Appeals of Provincetown, 404 Mass. 571, 574 (1989) (reaching the same result for an individual seeking to enforce the ordinance or bylaw); Rinaldi v. Board of Appeal of Boston, 50 Mass. App. Ct. 657 (2001) (no standing to enforce State Building Code).

In Warrington v. Zoning Board of Appeals of Rutland, 78 Mass. App. Ct. 903, 905 (2010), the Appeals Court ruled that failure to challenge the standing of a plaintiff during the administrative proceedings before the board of appeals did not "waive" the right to challenge standing once at the trial court.

[45] *Circle Lounge*, 324 Mass, at 431.

[46] *Id.* at 429-430 (1949); *Sherrill House*, 19 Mass. App. Ct. 274, 276-277 (1985); *Redstone*, 11 Mass. App. Ct. 383, 385 (1981); *Waltham Motor Inn*, 3 Mass. App. Ct. 210, 217 (1975).

[47] *Circle Lounge*, 324 Mass. 427, 432 (1949). The plaintiff, located in a business district, objected to a variance granted to construct a restaurant on nearby residentially zoned property. The restaurant would have been allowed in the business district.

> The residence zone . . . was established to protect that zone against business and manufacturing uses. It was not established to protect the plaintiff's restaurant, which is located in a business zone. The resident zone was designed to protect residence against business. It was not designed to protect business against business. Therefore it would be an anomaly to confer upon the plaintiff the peculiar legal rights against a business of a kind permitted in the zone where its property is.

Id. at 431.

claims.[48] This inquiry is roughly equivalent to the "zone of interest" test announced by the United States Supreme Court in *Association of Data Processing Service Organizations* v. *Camp*.[49]

The key inquiry is the claimed injury.[50] In the absence of any specific evidence on the question, the Court has relied on two rules of reason. "Parties in interest," as set forth in Mass. Gen. L. ch. 40A, § 11, enjoy a presumption of standing.[51] The statute defines a "party in interest" as "the petitioner, abutters, owners of land directly opposite on any public or private street or way, and abutters to abutters within three hundred feet of the property of the petitioner as they appear on the most recent applicable tax list."[52] Additionally, a nearby owner of property lying in the same or in a substantially similar type of zoning district enjoys a presumption of injury when seeking to uphold the character of the district.[53]

When a presumption exists, it must be placed in its proper perspective. "If the issue is contested, and any additional evidence is offered, the point of jurisdiction will be determined on all the evidence with no benefit to the plaintiffs from the presumption as such."[54] The Court has stated that the presumption "recedes if the issue is contested."[55] When this occurs, the burden of proof is on the party claiming

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[48] *See* Reeves v. Board of Zoning Appeal of Cambridge, 16 Mass. App. Ct. 1011, 1012 (1983) (holding that possible future injury under a Cambridge rent control ordinance does not render plaintiff a person aggrieved under the Zoning Act).

[49] Association of Data Processing Serv. Org. v. Camp, 397 U.S. 150, 153 (1970). *Camp* holds that if the interest the plaintiff seeks to protect is "arguably within the zone of interests" that Congress intended to protect or regulate by the relevant statute, then the plaintiff is an appropriate person to complain of the injury and had standing. *Id.* at 153.

[50] A claim of injury is not forfeited by an aggrieved person who negotiates with the petitioner for a maximum price of her nearby property. Bedford v. Trustees of Boston Univ., 25 Mass. App. Ct. 372, 377-378 (1988).

[51] Marotta v. Board of Appeals of Revere, 336 Mass. 199, 204 (1957); Tsagronis v. Board of Appeals of Waltham, 33 Mass. App. Ct. 55, 58 (1992); Harvard Square Defense Fund v. Planning Bd. of Cambridge, 27 Mass. App. Ct. 491, 495 (1989); Murray v. Board of Appeals of Barnstable, 22 Mass. App. Ct. 473, 476 (1986); Gordon v. Zoning Bd. of Appeals of Lee, 22 Mass. App. Ct. 343, 347 (1986); Paulding v. Bruins, 18 Mass. App. Ct. 708, 709 (1984); Waltham Motor Inn v. LaCava, 3 Mass. App. Ct. 210, 214 (1976).

[52] Mass. Gen. L. ch. 40A, § 11.

[53] Waltham Motor Inn v. LaCava, 3 Mass. App. Ct. 210, 214-215 (1976). *See also* Vainas v. Board of Appeals of Lynn, 337 Mass. 591, 594 (1958); Reynolds v. Board of Appeal of Springfield, 335 Mass. 464, 469-470 (1957).

[54] Marotta v. Board of Appeals of Revere, 336 Mass, at 204.

[55] Redstone v. Board of Appeals of Chelmsford, 11 Mass. App. Ct. 383, 385 (1981). *See also* Tsagronis v. Board of Appeals of Waltham, 33 Mass. App. Ct. 55, 58 (1992). In order to trigger this contest, a defendant who challenges standing on a motion for summary judgment must produce evidence "warranting a finding contrary to the presumed fact." Standerwick v. Zoning Board of Appeals of Andover, 64 Mass. App. Ct. 337, 341-42 (2005). It is not sufficient on summary judgment, "merely to dispute the plaintiffs' claim of standing and to show that the plaintiffs have no evidence to support their position." *Id.* at 342. "[M]ore than a challenge is required. To cause the plaintiffs' presumption to recede, the challenge must be supported by evidence sufficient to warrant a contrary conclusion." *Id.* at 343 n.9.

standing.[56] In general, "[a] trial judge's findings of aggrieved person status are entitled to deference."[57]

Three cases help define the modern era of the doctrine commencing with the ruling in *Barvenik v. Board of Aldermen of Newton*.[58] The Appeals Court reviewed a typical spat between neighbors and a successful permit applicant. Plaintiffs were various landowners living near the site of a former school, which was to be converted to 114 housing units for the elderly, all as authorized by a special permit issued by the board of aldermen. The site was zoned for multi-family use. The plaintiffs resided in a single-family-residence district; they complained that the development of the site would create a general increase in traffic and noise, change the character and appearance of the neighborhood, and result in drainage problems.[59] After a seven-day trial, the Land Court upheld the standing of five of the plaintiffs to contest the special permit, but affirmed the decision of the board of aldermen, granting the special permits, on the merits.[60]

The Appeals Court ruled that it need not reach the merits of the case because the plaintiffs were without standing to contest the matter.[61] The Court noted that plaintiffs, as parties in interest, were entitled to a presumption of aggrieved person status.[62] The tone of the Court signaled that abutter claims of standing would now get a hard look.

First, the Court gave short shrift to most of the plaintiffs' claimed injuries:

> Subjective and unspecified fears about the possible impairment of aesthetics or neighborhood appearance, incompatible architectural styles, the diminishment of close neighborhood feeling, or the loss of open or natural space are all considered insufficient bases for aggrievement under Massachusetts law.[63]

The Court characterized these concerns as "sincere," but concluded that it was "angst insufficient" for standing.[64]

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[56] Sherrill House v. Board of Appeals of Boston, 19 Mass. App. Ct. 274, 276 (1985).

[57] Tsagronis v. Board of Appeals of Wareham, 33 Mass. App. Ct. 55, 58-59 (1992); Paulding v. Bruins, 18 Mass. App. Ct. 707, 709 (1984).

[58] 33 Mass. App. Ct. 129 (1992). *See* note 70, *infra*, for additional cases.

[59] *Barvenik*, 33 Mass. App. Ct. at 134 n.11.

[60] The standing of plaintiffs was challenged by the defendants in pre-trial motions, without success. *Id.* at 131 n.6. In its post-trial decision, the lower court ruled that five abutter plaintiffs had standing, but that the remaining plaintiffs did not.

[61] *Id.* at 130. Defendants "extensively briefed the issue" on appeal. Plaintiffs' brief on appeal "did not discuss the issue of standing." *Id.* at 132 n.6. This certainly did not improve plaintiff's chances.

[62] *Id.* at 131. Because the plaintiffs resided in a different (and not substantially similar) zoning district, the second presumption, favoring those seeking to uphold the integrity of the district, was not available. *Id.* at 138.

[63] *Id.* at 132-133. *See also id.* at 134 n.11. For similar sentiments, *see* Michaels v. Zoning Board of Appeals of Wakefield, 71 Mass. App. Ct. 449 (2008).

[64] *Id.* at 134-135.

> In contrast, the court identified "legitimate zoning-related concerns, including possible vehicular traffic increases, anticipated parking problems, and the potential for litter."[65]

Unless a plaintiff can prove such harm, even a party in interest may lack standing.[66]

Barvenik's second contribution to the modern test for standing was its clear statement of the Court's evidentiary expectations. The "plaintiff must establish—

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[65] *Id.* at 133. In this regard, several cases have explored whether aesthetic or visual impacts qualify as "legitimate, zoning related concerns." In Monks v. Zoning Bd. of Appeals of Plymouth, 37 Mass. App. Ct. 685, 688 (1994), the Appeals Court acknowledged that the visual impact of a telecommunications tower could give rise to standing where the local zoning bylaw required that the "visual character or quality of the neighborhood" be considered in the grant of a special permit. *See also* Martin v. Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints, 434 Mass. 141, 146 (2001); Sheehan v. Zoning Board of Appeals of Plymouth, 65 Mass. App. Ct. 52, 55 (2005). In Rogel v. Collinson, 54 Mass. App. Ct. 304, 315 (2002), the Appeals Court found standing due to "palpable" harm from odors and dust caused by horses on a commercial trail. *See also* Choate v. Zoning Bd. of Appeals of Mashpee, 67 Mass. App. Ct. 376, 383 (2006) ("general aesthetic concerns . . . insufficient as a matter of law, to confer standing"); Kenner v. Zoning Board of Appeals of Chatham, 459 Mass. 115, 122 (2011)("Generally speaking, concerns about the visual impact of of a proposed structure on abutting property are insufficient to confer standing.") For recent commentary, *see* Edward Woll, Jr., *A Fresh Look at De Novo Review in Chapter 40A, § 17 Actions and the Role of Aesthetics in Zoning Decisions*, 88 Mass. L. Rev. 205 (2004).

In Sweenie v. Planning Bd. of Groton, 69 Mass. 477 (2007), the Appeals Court ruled that a fear of groundwater contamination was sufficient to confer standing on the challenger to a special permit awarded under the town's water resource protection overlay district. This result was reversed by the Supreme Judicial Court in Sweenie v. A.L. Prime Energy Consultants, 451 Mass. 539 (2008). The Court ruled that the "language of a by-law cannot be sufficient to confer standing: the creation of a protected interest (by statute, ordinance, by-law, or otherwise) cannot be conflated with the additional, individualized requirements that establish standing." In the absence of any evidence substantiating these fears, plaintiffs lacked standing.

See also Hoffman v. Board of Zoning Appeal of Cambridge, 74 Mass. App. Ct. 804 (2009) (standing based on loss of on-street parking in neighborhood).

In Central Street, LLC v. Zoning Bd. of Appeals of Hudson, 69 Mass. App. Ct. 487, 493 (2007), the Appeals Court ruled that diminution of property value was a protected interest sufficient for standing in an abutter's appeal of a variance.

[66] The Appeals Court suggested that in order to prove the special and different kind of injury necessary for standing, a plaintiff must show that these legitimate zoning-related concerns will result,

> if not a diminution in the value of his property, at least in his property or legal rights being more adversely affected by the activity authorized by the permit than (a) they are by present uses and activities or (b) they would be as a result of the uses and activities permitted as of right on the defendant's locus. *Barvenik*, at 51-52.

The Court offered no legal precedent for its alternative measures of injury in the absence of diminished value. In Marashlian v. Zoning Board of Appeals of Newburyport, 421 Mass. 719, 724 (1996), the Supreme Judicial Court disagreed:

> We decline to adopt such a rule, except to the extent that it requires specific facts to establish perceptible harm. Although the magnitude of the threat of harm from a use permissible as of right is a factor that may be considered, it is not dispositive of the standing issue.

by direct facts and not by speculative personal opinion — that his injury is special and different. . . ."[67] The plaintiff must offer more than "conjecture" and "hypothesis."[68] He must provide "specific evidence demonstrating a reasonable likelihood" of injury.[69] Citing the United States Supreme Court's decision in *Lujan v. Defenders of Wildlife*,[70] the Appeals Court calibrated its evidentiary expectations to the stage of litigation.[71]

In *Marashlian v. Zoning Board of Appeals of Newburyport*,[72] the Supreme Judicial Court confirmed several key components of the *Barvenik* decision. The board of appeals issued a special permit and two variances for the development of a hotel with a conference center on Newburyport's waterfront. Two plaintiffs, each a party in interest, sought judicial review. The plaintiffs claimed that the proposed development would cause disruption of neighborhood character, a shortage of parking spaces, attendant traffic congestion, and various problems (primarily, noise and lighting) associated with proposed valet parking services.[73] After trial,

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[67] *Id.* at 132. In this regard, the injury must be "particularized" to the plaintiff. Kenner v. Zoning Board of Appeals of Chatham, 459 Mass. 115, 120 (2011).

[68] *Id.* at 133 n.9 (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 561-62 (1992)).

[69] Plaintiff must produce "credible evidence" of such injury. In Butler v. City of Waltham, 63 Mass. App. Ct. 435, 441 (2005), the Appeals Court explained that credible evidence has both a quantitative and qualitative component.

> Quantitatively, the evidence must provide specific factual support for each of the claims of particularized injury the plaintiff has made. . . . Qualitatively, the evidence must be of a type on which a reasonable person could rely to conclude that the claimed injury likely will flow from the board's action. [citations omitted]

In *Barvenik*, at n. 13, the Court came close to suggesting that expert testimony is required to qualitiatively explain the "zoning related injury:"

> As a cautionary observation, we do not intend to suggest that plaintiffs asserting zoning aggrievement can never succeed, once their standing is contested, without producing expert witnesses on their behalf. The need for expert testimony depends, as in all cases, upon the trial judge's discretionary determination whether or not the subject matter is beyond the scope of the common knowledge, experience and understanding of the trier of fact without expert assistance. . . . Here, the judge acknowledged the value of expert testimony with respect to the issues of traffic and water distribution and expressly noted that the issues of water pressure, site drainage, storm drainage, and landscaping were "technical questions" and "specialized matters." (citations omitted)

[70] 504 U.S. 555(1992).

[71] *Barvenik*, 33 Mass. App. Ct. at 133 n.9. For post-*Barvenik* cases, *see* Riley v. Janco Cent., Inc., 38 Mass., App. Ct. 984 (1995); Reagan v. Planning Bd. of Braintree, 37 Mass. App. 956 (1994); Monks v. Zoning Bd. of Appeals of Plymouth, 37 Mass. App. Ct. 685 (1994). Marashlian v. Zoning Bd. of Appeals of Newburyport, 37 Mass. App. Ct. 931 (1994); Watros v. Greater Lynn Mental Health and Retardation Ass'n, 37 Mass. App. Ct. 657 (1994); Cohen v. Zoning Bd. of Appeals of Plymouth, 35 Mass. App. Ct. 619 (1993); Jaffe v. Zoning Bd. of Appeals of Newton, 34 Mass. App. Ct. 929 (1993); Watros v. Greater Lynn Health and Mental Retardation Ass'n, Inc., 421 Mass. 106 (1995); Tsagronis v. Board of Appeals of Wareham, 415 Mass. 329 (1993).

[72] *Marashlian*, 421 Mass. 719 (1996).

[73] These issues are summarized in Marashlian v. Zoning Bd. of Appeals of Newburyport, 37 Mass. App. Ct. 931, 932-933 (1994).

the judge ruled that the plaintiffs had standing to maintain the action, but that the board had not exceeded its authority.[74] In essence, the trial judge found that the proposed complex would not cause any of the alleged problems. Consequently, the special permit and variances were sustained on the merits.

The Appeals Court held that the trial judge's findings on the merits as to traffic, parking, and valet service also went to the threshold question of standing. Because the trial resulted in a finding that there was no harm, "[plaintiffs] have failed to make a 'specific showing that [they] will either be injured or that such injury would be special and different from that which others throughout the zone would experience. . . . ' "[75] In short, the Appeals Court ruled that it need not reach the merits of the board's decision because the plaintiffs' claims of injury were not proved at trial.

The *Marashlian* majority disagreed. It cited *Barvenik* for the proposition that "[i]f standing is challenged, the jurisdictional question is decided on "all the evidence with no benefit to the plaintiffs from the presumption.'"[76] However,

> [a] review of standing based on "all the evidence" does not require that the factfinder ultimately find a plaintiff's allegations meritorious. To do so would be to deny standing, after the fact, to any unsuccessful plaintiff. Rather the plaintiff must put forth credible evidence to substantiate his allegations. In this context, standing becomes, then, essentially a question of fact for the trial judge.[77]

Thus, it is plausible that a trial judge may conclude that the facts warrant both a finding of standing and an adverse ruling on the merits. *Marashlian* suggests that these are not inherently inconsistent results. On several occasions, the Court reiterated that "[t]he findings of the judge should not be overturned unless 'clearly erroneous.' "[78]

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[74] *Id.* at 931.

[75] *Id.* at 933.

[76] *Marashlian*, 421 Mass, at 721.

[77] Id.

[78] *Marashlian*, 421 Mass. 722 (citations omitted). *See also Watros*, 421 Mass. 725. Central St. LLC v. Zoning Bd. of Appeals of Hudson, 69 Mass. App. Ct. 487, 492 (2007); Mass. R. Civ. P. 52(a), as amended, 423 Mass. 1402 (1996). For *post-Marashlian* decisions, *see* Cox v. Board of Appeals of Carver, 42 Mass. App. Ct. 422 (1997) (standing emanating from increased pedestrian traffic at beach area); Rattner v. Planning Bd. of W. Tisbury, 45 Mass. App. Ct. 8 (1998) (abutter has standing to challenge waivers granted in the course of definitive plan approval); Chambers v. Building Inspector of Peabody, 40 Mass. 762, 768 (1996). Nickerson v. Zoning Board of Appeals of Raynham, 53 Mass. App. Ct. 680 (2002) (no standing where plaintiff resided one mile from retail store and complained of traffic). *See also* Choate v. Zoning Bd. of Appeals of Mashpee, 67 Mass. App. Ct. 376, 383 (2006) (plaintiffs survive challenge by adequately alleging traffic harms). For a review of the changes to the law of standing in the period 1992-1997, *see* Mark Bobrowski, *The Zoning Act's* "Person Aggrieved" *Standard: From* Barvenik *to* Marashlian, 18 W. New Eng. L. Rev. 385 (1996). *See also Standing in Zoning Cases:* Marashlian v. Zoning Board of Appeals of Newburyport, 41 Boston Bar J. No. 1, p.14 (1997).

In *Standerwick v. Board of Appeals of Andover*,[79] the Supreme Judicial Court revisited the doctrine to explain the defendant's burden. To rebut the presumption of standing attached to a party in interest, a defendant must offer evidence "warranting a finding contrary to the presumed fact."[80]

> A presumption does not shift the burden of proof; it is a rule of evidence that aids the party bearing the burden of proof in sustaining that burden by "throw[ing] upon his adversary the burden of going forward with evidence."[81]

Thus, an abutter's presumption shifts to the defendant the burden of going forward with the evidence; however, the plaintiff still has the burden of proof on the issue of standing.[82]

Standerwick was decided on a motion for summary judgment. The Supreme Judicial Court explained the defendant's evidentiary burden under Mass. R. Civ. P. 56. The moving party may satisfy this burden by evidence, "unmet by countervailing materials, that the party opposing the motion has no reasonable expectation of proving a legally cognizable injury."[83] The defendant may also rely on "plaintiff's lack of evidence" as to claims of injury, "obtained through discovery."[84] However, "[i]t is not sufficient for a defendant simply to file a motion for summary judgment, or to deny the plaintiff's allegations."[85]

If the plaintiff claims standing by virtue of diminished property value, this claim "must be derivative of or related to cognizable interests protected by the applicable zoning scheme."[86] This result was confirmed in *Kenner v. Zoning Board of Appeals of Chatham*.[87]

[B] Res Judicata

In some zoning disputes, the Court may be barred from hearing the matter by the doctrine of res judicata.

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[79] 447 Mass. 20 (2006). The matter involved the appeal of a comprehensive permit under Mass. Gen. L. ch. 40B, ss. 20-23.

[80] *Standerwick*, 447 Mass. at 34 (citations omitted).

[81] *Id.*

[82] *Id.* at 35 n.20.

[83] *Id.* at 35.

[84] *Id.* at 35-36.

[85] *Id.* at 37. For post-*Standerwick* cases, *see*, Central Street, LLC v. Zoning Board of Appeals of Hudson, 69 Mass. App. 487 (2007); Sweeney v. Planning Board of Groton, 69 Mass. App. Ct. 477 (2007); Dwyer v. Gallo, 453 Mass. 517 (2008); Krafchuk v. Planning Board of Ipswich, 453 Mass. 517 (2009); Hoffman v. Board of Zoning Appeal of Cambridge, 74 Mass. App. Ct. 804 (2009); 81 Spooner Road, LLC v. Zoning Board of Appeals of Brookline, 78 Mass. App. Ct. 233 (2010); Warrington v. Zoning Board of Appeals of Rutland, 78 Mass. App. Ct. 903 (2010).

[86] 447 Mass. at 31-32. *See also* Kenner v. Zoning Board of Appeals of Chatham, 459 Mass. 115, 124 (2011). *Cf.* Central Street, LLC v. Zoning Board of Appeals of Hudson, 69 Mass. App. Ct. 487, 493 (2007).

[87] 459 Mass. 115, 123-24 (2011).

2021-1 Cumulative Supplement

HANDBOOK OF MASSACHUSETTS LAND USE AND PLANNING LAW

Fourth Edition

MARK BOBROWSKI

Wolters Kluwer

No public water supply or sewer or other municipal utility or improvement shall be constructed in any public or private way in any city or town having an official map elsewhere than in a subdivision approved under the subdivision control law, unless such way has been placed on or made part of such map. [And] No permit for the erection of any building elsewhere than in a subdivision approved under the subdivision control law in any city or town having an official map shall be issued unless a way giving access to the lot upon which such proposed building is to stand has been placed on or made a part of such map; provided, that an applicant for a building permit which has been denied under this section shall have the same remedy as a person whose application for a building permit has been denied under section eighty-one Y of this chapter.

If such law is not in effect in any city or town adopting an official map, such city or town shall forthwith provide a board of appeals in the manner set forth in section eighty-one Z, which shall have jurisdiction over appeals under this section in the same manner as provided in sections eighty-one Y to eighty-one AA. (Emphasis supplied by Judge Long)

Judge Long ruled that Tolman was entitled to have Pinagree Road added to the Official Map but only that section of the road shown on his ANR Plan. The road may also be subject to reasonable terms and conditions by the Planning Board before it can be used.

NO STANDING FOR DENSITY AND OVERCROWDING

Murchison v. Zoning Board of Appeals of Sherborn, 485 Mass. 209 (2020)

Murchison is the much anticipated written decision that follows four full months after the Supreme Judicial Court ruled at the oral argument that the plaintiff lacked standing to contest the decision of the ZBA.

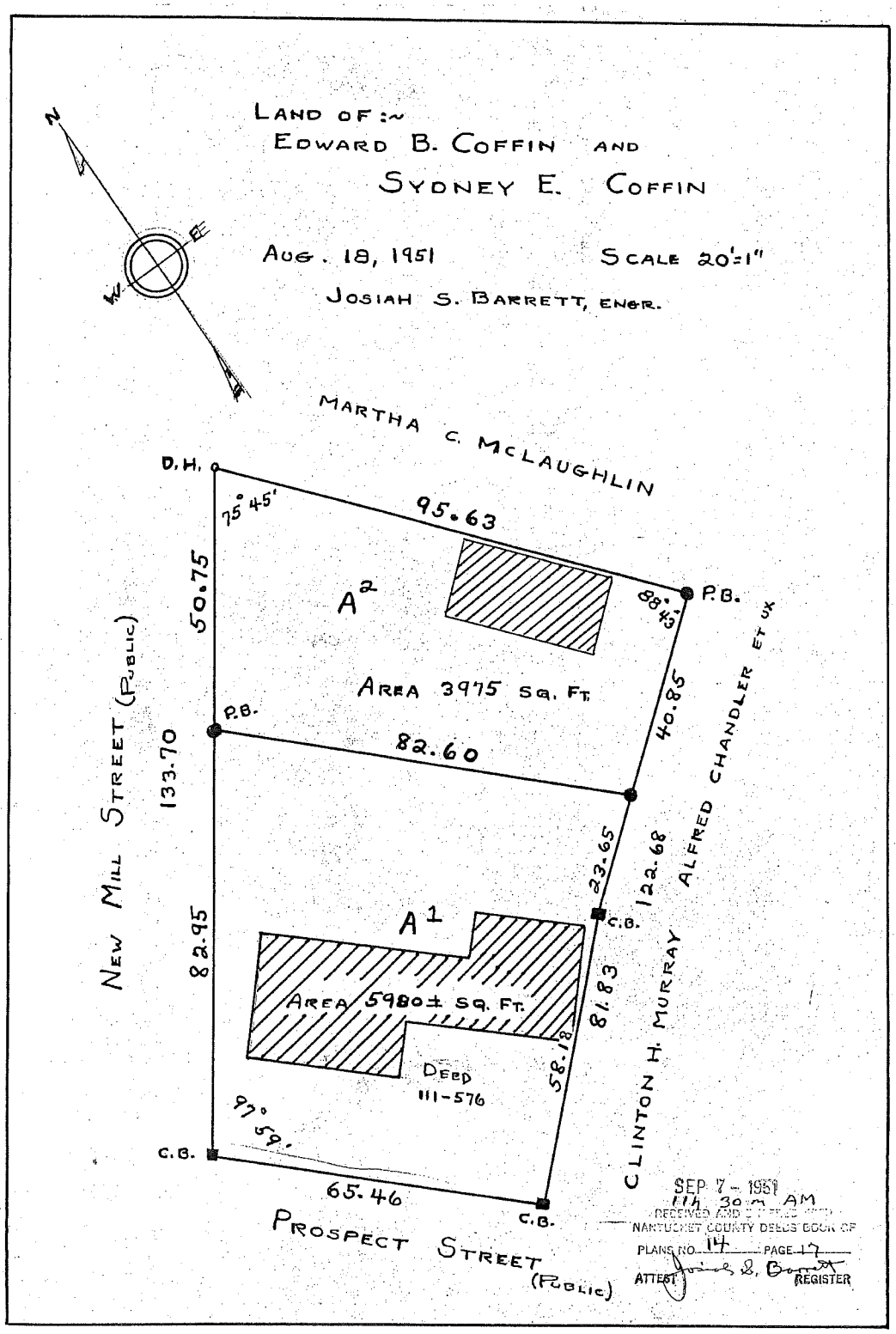
The plaintiffs challenged the right of their neighbors, Panarella and Erichsen (defendants), to construct a single-family residence on property directly across the street from the plaintiffs' home. "Although the defendants' irregularly shaped property is sufficiently wide at the street and meets setback requirements, the plaintiffs contend that the property is too narrow at the location where the home would be built." Both properties are located within Sherborn's Residence C zoning district. In that district, the applicable zoning bylaws require (1) three-acre minimum lot size; (2) minimum continuous frontage of 250 feet; (3) minimum lot width of 250 feet; (4) minimum front setback of sixty feet; (5) minimum side setback of forty feet; and (6) minimum rear setback of thirty feet. Other than minimum lot width, there is no dispute that the defendants' proposed project complies with applicable zoning requirements, including those pertaining to lot frontage and front yard setback requirements.

The zoning board of appeals of Sherborn (board) upheld the issuance of the foundation permit, and the plaintiffs challenged the issuance by filing a complaint in the Land Court. After a trial, a Land Court judge dismissed the plaintiffs' appeal for lack of standing; the judge concluded that the plaintiffs were not "aggrieved"

by the board's decision within the meaning of G.L. c. 40A, § 17. The Appeals Court reversed. *See* 96 Mass. App. Ct. 158 (2019). The Appeals Court concluded that noncompliance with the dimensional limits itself was sufficient to establish harm. The Supreme Judicial Court granted the defendants' application for further appellate review.

After oral argument in this case, the Supreme Judicial Court issued an order affirming the Land Court judgment dismissing the plaintiffs' complaint, with an opinion to follow. This opinion states the reasons for the Court's conclusion that the plaintiffs are not "person[s] aggrieved" for purposes of G.L. c. 40A, § 17, and therefore lack standing to challenge the board's decision. It also closes some significant loopholes in the assessment of aggrieved person status in zoning matters.

1. Density and overcrowding are not ordinarily interests protected by the Zoning Act or by generic dimensional requirements like lot size or setback rules. This represents a leap forward for the development community because these claims of injury generally do not require plaintiffs to engage expert testimony, unlike traffic, noise, and storm water claims.
2. The Supreme Judicial Court confirmed that lost property value, standing alone, is not sufficient for standing. The claim must be derivative or related to other zoning related injuries.
3. Lay testimony about expert matters such as loss of view, lighting, traffic, and noise will generally be met with skepticism by a reviewing court.
4. To quote the Supreme Judicial Court: "Establishing standing requires a plaintiff to do more than merely allege a zoning violation. *See Sweenie,* 451 Mass. at 545, 887 N.E.2d 238. "The language of a bylaw cannot be sufficient in itself to confer standing: the creation of a protected interest (by statute, ordinance, bylaw, or otherwise) cannot be conflated with the additional, individualized requirements that establish standing." *Id. See Denneny v. Zoning Board of Appeals of Seekonk,* 59 Mass. App. Ct. 208, 213-214, 794 N.E.2d 1269 (2003) (rejecting claim that proximity constituted per se injury). Standing as an "aggrieved" person requires evidence of an injury particular to the plaintiffs, as opposed to the neighborhood in general, the injury must be causally related to violation of zoning laws, and it must be more than de minimis. *See Kenner,* 459 Mass. at 117, 944 N.E.2d 163 (emphasizing distinction between impact and injury); *Standerwick,* 447 Mass. at 35, 849 N.E.2d 197; *Marotta v. Board of Appeals of Revere,* 336 Mass. 199, 203-204, 143 N.E.2d 270 (1957) ("status of the property or of the plaintiffs may be such that the plaintiffs are not aggrieved even though the property is very near"). None of those elements is present here."


LAND OF :~
EDWARD B. COFFIN AND
SYDNEY E. COFFIN
AUG. 18, 1951
SCALE 20'=1"
JOSIAH S. BARRETT, ENGR.
N
E
W
MARTHA C. MCLAUGHLIN
D.H.
75° 45'
95.63
50.75
A2
88° 43'
P.B.
AREA 3975 SQ. FT.
P.B.
82.60
40.85
133.70
NEW MILL STREET (PUBLIC)
ALFRED CHANDLER ET UX
23.65
122.68
C.B.
A1
82.95
AREA 5980± SQ. FT.
81.83
58.18
DEED
111-576
CLINTON H. MURRAY
93° 59'
C.B.
65.46
C.B.
PROSPECT STREET
(PUBLIC)
SEP 7 - 1951
11h 30m AM
RECEIVED AND ENTERED
NANTUCKET COUNTY DEEDS BOOK OF
PLANS NO. 14 PAGE 17
ATTEST
REGISTER

2016 00003108
Bk: 1559 Pg: 133 Page: 1 of 2
Doc: DD 10/14/2016 11:38 AM

DEED

BARBARA D. STEVENS, as Trustee of the BARBARA D. STEVENS LIVING TRUST under Declaration of Trust dated November 6, 2008, for consideration paid in the amount of $1,675,000.00, grant to 14 NEW MILL STREET, LLC, a Massachusetts limited liability company with a mailing address of 896 Beacon Street, Boston, Massachusetts 02215, with QUITCLAIM COVENANTS,

That certain parcel of land situated in Nantucket, Nantucket County, Massachusetts, together with the buildings and improvements thereon, now known and numbered as 14 New Mill Street, bounded and described as follows:

NORTHEASTERLY by Lot A-2, as shown on plan hereinafter mentioned, eighty-two and 60/100 (82.60) feet;

SOUTHEASTERLY by lands now or formerly of Clinton H. Murray and Alfred Chandler et ux, eighty-one and 83/100 (81.83) feet;

SOUTHWESTERLY by Prospect Street, sixty-five and 46/100 (65.46) feet; and

NORTHWESTERLY by New Mill Street, eighty-two and 95/100 (82.95) feet.

Said land is shown as Lot A-1 on a plan prepared by Josiah S. Barrett, Engr., dated August 18, 1951 recorded with Nantucket Deeds in Plan Book 14, Page 17. Said land contains 5,980 square feet, more or less, according to said plan.

Said land is conveyed subject to the following matters:

(a) Said premises are subject to a Finding of the Nantucket Board of Appeals dated November 30, 1995, recorded with Nantucket Deeds in Book 491, Page 96.

(b) Real estate taxes assessed by the Town of Nantucket for the fiscal year, commencing on July 1, 2016.

For title reference, see Deed recorded with Nantucket Deeds in Book 1160, Page 218.

The Grantor hereby certifies that no beneficiary, nor a spouse, civil union partner, ex-spouse or ex-civil union partner of a beneficiary of the Barbara D. Steven Living Trust, occupies or intends to occupy the land as a principal residence or is entitled to claim the benefit of an existing estate of homestead in the property by court order or otherwise.

Executed and sealed on October 14, 2016.

Barbara D. Stevens
Barbara D. Stevens,
Individually

Barbara D. Stevens
Barbara D. Stevens, Trustee
of the Barbara D. Stevens
Living Trust

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss.

On this 11th day of October, 2016, before me, the undersigned notary public, personally appeared Barbara D. Stevens, Individually and as Trustee of the Barbara D. Stevens Living Trust, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed voluntarily, as her free act and deed, for its stated purpose and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of her knowledge and belief.

Barbara A Rees
Notary Public
My commission expires:
12/23/22

NANTUCKET LAND BANK
CERTIFICATE
☑ Paid $ 33500.00
☐ Exempt
☐ Non-applicable
37855 10/14/16
No. Date
Authorization

MASSACHUSETTS EXCISE TAX
Nantucket County ROD #16 001
Date: 10/14/2016 11:38 AM
Ctrl# 462523 26916 Doc# 00003108
Fee: $7,668.00 Cons: $1,675,000.00

NANTUCKET COUNTY Received & Entered
Attest: Jennifer H. Ferreira, Register of Deeds

Nantucket County Registry of Deeds

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The Commonwealth of Massachusetts

Secretary of the Commonwealth

State House, Boston, Massachusetts 02133

William Francis Galvin
Secretary of the
Commonwealth

January 18, 2017

TO WHOM IT MAY CONCERN:

I hereby certify that a certificate of organization of a Limited Liability Company was filed in this office by

14 NEW MILL STREET, LLC

in accordance with the provisions of Massachusetts General Laws Chapter 156C on **September 23, 2016.**

I further certify that said Limited Liability Company has filed all annual reports due and paid all fees with respect to such reports; that said Limited Liability Company has not filed a certificate of cancellation or withdrawal; and that said Limited Liability Company is in good standing with this office.

I also certify that the names of all managers listed in the most recent filing are: **COPLEY MANAGEMENT & DEVELOPMENT CORP.**

I further certify, the names of all persons authorized to execute documents filed with this office and listed in the most recent filing are: **COPLEY MANAGEMENT & DEVELOPMENT CORP., NORMAN A. LEVENSON**

The names of all persons authorized to act with respect to real property listed in the most recent filing are: **NORMAN A. LEVENSON**

In testimony of which,
I have hereunto affixed the
Great Seal of the Commonwealth
on the date first above written.

William Francis Galvin

Secretary of the Commonwealth

Processed By:jbm

ATTEST: NANTUCKET Jennifer H. Ferreira, Register

OWNERS RESPONSE To APPEAL & SUPPORTING MATERIALS

GILMAN, McLAUGHLIN & HANRAHAN LLP

— COUNSELLORS AT LAW —

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(1931-1994)

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remsr@gilmac.com
Direct Dial: 617-371-0424

February 3, 2021

VIA EMAIL (eantonietti@nantucket-ma.gov)

Nantucket Zoning Board of Appeals
c/o Eleanor W. Antonietti
2 Fairgrounds Road
Nantucket, MA 02554

RE: 14 New Mill Street, Nantucket
Nantucket ZBA File No. 02-21

To Chair McCarthy and Members of the Zoning Board of Appeals:

Please be advised that we represent 14 New Mill Street, LLC, which owns the property at 14 New Mill Street, Nantucket.

On behalf of 14 New Mill Street, LLC we hereby oppose the application to appeal the December 1, 2020 determination by the Nantucket Building Commissioner, filed on December 31, 2020 by counsel representing the ACK*NOW group. In support of this opposition, we are submitting the accompanying Memorandum. Please provide the Memorandum to the Board in advance of the public hearing scheduled for February 11, 2021 at 1:00 PM. Kindly provide information so that I can register to participate in the hearing.

Thank you for your attention and assistance with this matter.

Sincerely,

Robert E. McLaughlin, Sr.

MEMORANDUM

TO: Nantucket Zoning Board of Appeals

FROM: 14 New Mill Street, LLC — Owner of 14 New Mill Street

RE: Nantucket ZBA File No. 02-21 — Appeal Application of ACK*NOW

DATE: February 3, 2021

I. Introduction and Procedural History

14 New Mill Street, LLC (the "Owner") owns the single-family home located at 14 New Mill Street, Nantucket, Massachusetts (the "Property") which is the subject of this appeal. The Property was purchased by 14 New Mill Street, LLC in October 2016.

On November 12, 2020, the group ACK*NOW together with multiple, individual property owners, through their counsel, filed a request for zoning enforcement with the Zoning Enforcement Officer of the Town of Nantucket. They requested enforcement of the zoning Bylaw that prohibits commercial uses in a residential district. They claimed that the Property is a so-called Short-Term Rental ("STR") and thus a prohibited commercial use in the residential zone where the Property is located. (The Owner was not provided a copy of this letter by ACK*NOW, and received no notice that the request for zoning enforcement about its Property had been filed with the Zoning Enforcement Officer. The Owner learned of the request indirectly, and provided its own letter (opposing the request for zoning enforcement) to the Zoning Enforcement Officer on November 24, 2020.)

On December 1, 2020, the Building Commissioner for Nantucket, Paul Murphy, issued a letter to counsel for ACK*NOW, denying the request for zoning enforcement, stating that "the use of the property for short term rentals does not violate the Town's zoning Bylaw." The letter

advised ACK*NOW's counsel of its right to appeal to the Nantucket Zoning Board of Appeals ("ZBA"). (Again, the Property Owner was not provided any notice of the Building Commissioner's decision, or a copy of his letter.)

On December 31, 2020, counsel for ACK*NOW filed an Application, appealing the Building Commissioner's denial of its request for zoning enforcement to the ZBA. This Application is File No. 02-21. Notably, the only "Applicant's name(s)" listed on the appeal Application form is: "ACK*NOW." Likewise, on the form "LIST OF PARTIES IN INTEREST IN THE MATTER OF PETITION OF:" the "APPLICANT" section is filled out like this:

> Lily Ricci, Anderson & Kreiger, LLC 50 Milk Street, Boston, MA 02109, on behalf of ACK*NOW, 28B Easy Street, Nantucket, MA 02554

Therefore, the *only* actual applicant for this appeal application to the ZBA is the organization ACK*NOW, notwithstanding that multiple individual owners of abutting properties are listed in the December 30, 2020 cover letter from counsel, the Statement of Agency, and the Memorandum. They are the owners of 3 New Mill Street, 4 New Mill Street, 9 New Mill Street, 11 New Mill Street, and 12 New Mill Street; hereafter, the "Individual Neighbors."

This ZBA appeal is scheduled for public hearing on Thursday, February 11, 2021 at 1:00 P.M. via Zoom.

The Property Owner 14 New Mill Street LLC hereby opposes the appeal submitted by ACK*NOW to the ZBA. The ZBA should affirm the Building Commissioner's decision and deny this appeal because, first, the Appellant and the Individual Neighbors lack the requisite legal standing to bring this appeal, and second, because — as the Building Commissioner determined — there is no violation of the zoning Bylaw in these circumstances.

II. Argument

A. Standard of Review

In reviewing an appeal from the denial of a request for zoning enforcement, the ZBA "may … make orders or decisions, reverse or affirm in whole or in part, or modify any order or decision, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct issuance of a permit." Gen. L. ch. 40A, § 14. For this ZBA, the "concurring vote of four members of [the board] shall be necessary to reverse any order or decision of any administrative official under this chapter." Gen. L. ch. 40A, § 15; see also Nantucket Bylaws, § 139-31 (E)(3). "The Board of Appeals shall cause to be made a detailed report of its proceedings, indicating the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reason for its decision and its official actions." Bylaws, § 139-31 (E)(4).

B. Standing

To be able to appeal to the ZBA a party must be "aggrieved." Mass. Gen. Laws ch. 40A, § 8. In this context, the term "aggrieved" is a term of art with a specific legal meaning. It does not mean being unhappy about, or disapproving of, a decision related to zoning or land use. To qualify as actually "aggrieved" for legal purposes, the abutter needs to be able to establish how their personal legal interest or rights will be specifically harmed; speculation is not enough.

Thus, being "aggrieved" is a jurisdictional requirement to be able to maintain a § 8 appeal. "Aggrieved person status is no less a jurisdictional condition to maintaining an appeal to a board of appeal under G.L. c. 40A, § 8, than it is to maintaining judicial review under § 17." Chongris v. Board of Appeals of Andover, 17 Mass. App. Ct. 999, 1000 (1984); see also 81 Spooner Road, LLC v. Zoning Board of Appeals of Brookline, 461 Mass. 692, 700 n.12 (2012)

(citing Chongris). When a party has no right to file an appeal, the ZBA has no authority to hear it. Chongris, 17 Mass. App. Ct. at 1000.

While an abutter or an abutter within 300 feet of the property at issue is a so-called "party in interest" and thus has a presumption of being "aggrieved," that presumption can be rebutted. See 81 Spooner Road, LLC, 461 Mass. at 700-701; Mass. Gen. Laws ch. 40A, § 11. If rebutted, the presumption recedes and the issue of standing (i.e., being aggrieved) is determined on all of the evidence, with the abutter having to prove his standing "by putting forth credible evidence to substantiate the allegations." 81 Spooner Road, LLC, 461 Mass. at 701.

A party may rebut the presumption either "by providing affirmative evidence that a basis for aggrievement is not well founded – or by demonstrating, in the negative, that the [abutters] lack any factual foundation for asserting a claim of aggrievement." Del Torchio v. Movali, 2009 WL 391623 *10 (Mass.Land Ct. 2009). That is, if the allegations of harm are shown to be "unfounded or *de minimis*", the abutter's presumption will have been successfully challenged. 81 Spooner Road, LLC, 461 Mass. 702, citing Kenner v. Zoning Board of Appeals of Chatham, 459 Mass. 115, 119-120 (2011) ("Aggrievement requires a showing of more than minimal or slightly appreciable harm."). As for showing the *absence* of factual support, evidence demonstrating such lack of factual support for claims of aggrievement "has equal force." Standerwick v. Zoning Board of Appeals of Andover, 447 Mass. 20, 36 (2006).

And if successfully rebutted, the law is clear that the party claiming to be a 'person aggrieved' "must be able to demonstrate, not merely speculate, that there has been some infringement of his legal rights" and the "claimed injury or loss must be personal to the party, not merely reflective of the concerns of the community." Denneny v. Zoning Board of Appeals of Seekonk, 59 Mass. App. Ct. 208, 211 (2003). The abutter is required to "establish — by direct

facts and not by speculative personal opinion — that his injury is special and different from the concerns of the rest of the community." Standerwick, 447 Mass. at 33. The required evidence needs to be sufficient, both quantitatively and qualitatively. See Butler v. City of Waltham, 63 Mass. App. Ct. 435, 441 (2005). "Quantitatively, the evidence must provide specific factual support for each of the claims of particularized injury the [abutter] has made. Id. "Qualitatively, the evidence must be of a type on which a reasonable person could rely to conclude that the claimed injury likely will flow from the [enforcement officer's] action. Conjecture, personal opinion, and hypothesis are therefore insufficient." Id.

It is also worth noting that zoning is concerned with the *use* of land, not with ownership. See CHR General, Inc. v. Newton, 387 Mass. 351, 356 (1982) ("A 'fundamental principle of zoning is that it deals basically with the use, without regard to the ownership, of the property involved or who may be the operator of the use.'"). ACK*NOW's focus on who owns 14 New Mill Street is misplaced, as the question of ownership is irrelevant to zoning enforcement.

1. ACK*NOW's Standing

First, with respect to ACK*NOW, its website describes it as a 501(c)(4) social welfare organization. The "Statement of Agency" describes it as "a local non-profit," and concedes that ACK*NOW does not own any property whatsoever, let alone property that abuts the Property in question. Further, the Appellant's Memorandum and supporting materials are utterly devoid of any allegation of any actual harm that ACK*NOW has suffered, and it is unclear how such an organization could ever suffer harm or be aggrieved. "It is settled that a statement of organizational purpose cannot clothe a civic association with aggrieved person status." Chongris v. Board of Appeals of Andover, 17 Mass. App. Ct. at 999. ACK*NOW's obvious lack of any particular harm or injury is highlighted by the "Conclusion" section of its Memorandum (page 23

of the PDF appeal materials). Its concern with "Nantucket's already over-priced and under-supplied year-round housing stock" reflects its "organization purpose" and is nothing more than a concern of a section of the general community.

Thus, there was no basis for the organization to have legal standing to seek zoning enforcement related to the 14 New Mill Street property, and more importantly — there is no basis now for it to appeal the denial of the request for zoning enforcement pursuant to chapter 40A, § 8. Accordingly, ACK*NOW's purported appeal should be denied because the ZBA has no authority to even hear it. (It appears that ACK*Now is well aware of the fact that zoning enforcement is not appropriate to achieve its goals, in that appears to be the sponsor of a Warrant Article regulating short-term rentals.)

2. The Standing of the Individual Neighbors

As noted above, none of the individual abutters are named, or even mentioned, on either the completed Board of Appeals "Application" form, or as an "Applicant" on the "LIST OF PARTIES IN INTEREST IN THE MATTER OF THE PETITION OF" document. Although the Property Owner maintains that the Individual Neighbors are not parties to this purported appeal to the ZBA, it ultimately makes no difference to the outcome because they have not come close to establishing the requisite harm needed to have standing to pursue this appeal.

None of the individual Neighbors have made any specific allegations of harm that he or she has suffered as a result of the use of the Property at 14 New Mill Street. There is merely a vague reference to "increased traffic and noise" on page two of the Appellant's Memorandum (page 19 of the PDF of appeal materials).

The Owner submits that this wholly unsupported claim of harm is clearly insufficient to meet the standard needed to have standing to maintain an appeal. The Individual Neighbors'

silence speaks volumes. There is no indication whatsoever of any formal complaints made by anyone concerning the Property. No affidavits have been submitted. No photographs (of "increased traffic") or recordings (of "increased … noise") have been provided. No measurements of traffic, vehicle use, or noise have been included. There is no mention of any expert evidence or testimony that might be available. This is not a case of 'weak evidence' of harm — this is zero evidence of harm, and has crossed over into the realm of the frivolous.

C. The Property does not violate the Bylaws

The glaring lack of any specific claim of harm suffered by ACK*NOW or the Individual Neighbors is completely understandable, and is due to the actual use of the Property at issue here. That is, there is no harm alleged because no harm exists — because the Property is indeed being use as a residence and solely as a residence. Where there is, for all intents and purposes, normal "residential use" of the Property, it follows that there is no cognizable harm to any abutters, neighbors, or to this residential neighborhood.

The Owner submits that the current use of the house at 14 New Mill Street qualifies as a valid and genuine "private residential use." If so, this "private residential use" means that the use does *not* come within the definition of "commercial" in the Bylaws, as the Appellant contends, and there is no violation of the Bylaws. Bylaws, § 139-2 (Definitions and word usage).

The use here is indeed "private residential use" because anyone who stays at the house lives there as a resident would, using the house for sleeping, cooking and eating meals, and other normal day-to-day "residential" living activities. In short, the house is used as a single-family house — and only as a single-family house — regardless of who stays there or for how long. This situation is therefore distinguishable from the Lytle v. Swiec Land Court case cited in the

Appellant's Memorandum. That case involved a two-family dwelling and the owner argued that the use of one unit was an allowable "accessory use" of the property. Here, the house at 14 New Mill Street is a single-family residence being used as a single-family residence in this residential district.

Moreover, this particular single-family home does not host typical commercial-type uses, such as weddings, parties, functions, conferences, or business meetings. That was the issue in the Stevens v. Zoning Board of Appeals of Bourne case cited, where the property was being rented out as a wedding venue for up to 100 guests. The Appellant's reliance on that case is therefore misplaced.

Likewise, the property in the Styller v. Aylward Land Court case was being used for "a broad range of purposes," both residential and commercial, including "business retreats, business conferences, photo shoots for advertisements, and family reunions." That case was quite unusual, as zoning enforcement only became involved after a murder occurred at a large party at the property. It is also distinguishable because it involved an amendment of Lynnfield's zoning bylaw to explicitly address so-called "short term rentals." Currently, there is no comparable bylaw on the books in Nantucket.

III. Conclusion

In conclusion, the Building Commissioner's denial of the request for zoning enforcement was correct and should be affirmed by the Board. Thus, the Board should deny this appeal application.

Respectfully submitted,

14 NEW MILL STREET, LLC,

By its attorneys,

/s/ Robert E. McLaughlin, Sr.

Robert E. McLaughlin, Sr. (BBO #337480)
John G. Hofmann (BBO #653989)
Gilman, McLaughlin & Hanrahan, LLP
101 Merrimac Street, P.O. Box 9601
Boston, MA 02114
(617) 227-9999
remsr@gilmac.com
jhofmann@gilmac.com

Dated: February 3, 2021

Damon & Debra CARTELLI

35 WASHINGTON ST.

FILE NO. 03-21

VARIANCE MODIFICATION

NANTUCKET
TOWN CLERK
2021 FEB -1 PM 2:56

VAUGHAN, DALE, HUNTER, BEAUDETTE AND SWAIN
PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
WHALER'S LANE
P.O. BOX 659
NANTUCKET, MASSACHUSETTS 02554
—
TEL: (508) 228-4455
FAX: (508) 228-3070

EDWARD FOLEY VAUGHAN
KEVIN F. DALE
RICHARD P. BEAUDETTE
BRYAN J. SWAIN

WILLIAM F. HUNTER
OF COUNSEL

January 7, 2021

VIA HAND DELIVERY AND E-MAIL

Nantucket Zoning Board of Appeals
Attn: Eleanor W. Antonietti
Zoning Administrator
2 Fairgrounds Road
Nantucket, MA 02554

Re.: **35 Washington Street, Nantucket, MA 02554**
Modification of Variance No. 73-94

Dear Eleanor,

Our clients, Damon S. Cartelli and Debra A. Cartelli (the "Applicants"), own the improved property located at 35 Washington Street, Nantucket, Massachusetts 02554, by virtue of Deed recorded in Book 1635, Page 329, at the Nantucket Registry of Deeds. (the "Premises"). The Premise is encumbered by Zoning Board of Appeals Variance No. 73-94 (the "Variance"), which validates the Premises' insufficient frontage. The Variance contains a condition that prohibits more than one (1) dwelling on the Premises. The Applicants desire to modify the Variance and remove the condition prohibiting more than one (1) dwelling on the Premises.

Enclosed please find a completed Zoning Board of Appeals Application, containing the following materials:

1. The filing fee,
2. Addendum,
3. Locus Plan from the Nantucket Tax Assessor's Map Book,
4. Surveyed plot plan of existing conditions in 8.5 by 11 format,
5. A certified abutters list, and Two (2) separate sets of addressed mailing labels based on the abutter list provided by the Tax Assessor's office

Please schedule the matter for the February 11, 2021 Zoning Board of Appeals meeting. Thank you for your attention to this matter, please do not hesitate to call me should you have any questions or concerns.

Sincerely,

Richard Beaudette, Esq.

RPB/BJS
Enc.
cc: Damon S. Cartelli and Debra A. Cartelli

Zoning Board of Appeals
JAN 14 2021
RECEIVED

TOWN OF NANTUCKET
BOARD OF APPEALS
NANTUCKET, MA 02554

2021 FEB -1 PM 2:59
NANTUCKET TOWN CLERK

APPLICATION

Fee: $450.00 **File No. 03.21**

Owner's name(s): CARTELLI, DAMON S. & DEBRA, A.

Mailing address: C/O VDHB&S, 2 Whalers Lane, PO BOX 659, Nantucket, MA 02554

Phone Number: 508-228-4455 E-Mail: rick@vdhlaw.com

Applicant's name(s): same as above

Mailing Address: same as above

Phone Number: same as above E-Mail: same as above

Locus Address: 35 WASHINGTON ST, Nantucket, MA 02554,

Assessor's Map/Parcel: 42.3.2 / 142

Land Court Plan/Plan Book & Page/Plan File No.: Lot 4 on Plan No. 46-U

Deed Reference/Certificate of Title: Book: 1635, Page 329: Zoning District: ROH

Uses on Lot- Commercial: None ____ Yes (describe) N/A
Residential: Number of dwellings 1 Duplex 0 Apartments 0

Date of Structure(s): all pre-date 7/72 1 or _____

Building Permit Numbers: _____

Previous Zoning Board Application Numbers: SP:-98-92, Variance 73-94

Zoning Board of Appeals
JAN 14 2021
RECEIVED

TOWN OF NANTUCKET
BOARD OF APPEALS
NANTUCKET, MA 02554

APPLICATION

Fee: $450.00 **File No. 03.21**

Owner's name(s): CARTELLI, DAMON S. & DEBRA, A.

Mailing address: C/O VDHB&S, 2 Whalers Lane, PO BOX 659, Nantucket, MA 02554

Phone Number: 508-228-4455 E-Mail: rick@vdhlaw.com

Applicant's name(s): same as above

Mailing Address: same as above

Phone Number: same as above E-Mail: same as above

Locus Address: 35 WASHINGTON ST, Nantucket, MA 02554,

Assessor's Map/Parcel: 42.3.2 / 142

Land Court Plan/Plan Book & Page/Plan File No.: Lot 4 on Plan No. 46-U

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Residential: Number of dwellings 1 Duplex 0 Apartments 0

Date of Structure(s): all pre-date 7/72 1 or _____

Building Permit Numbers: _____

Previous Zoning Board Application Numbers: SP:-98-92, Variance 73-94

2 Fairgrounds Road Nantucket Massachusetts 02554
508 325-7587 telephone 508-228-7298 facsimile

State below or attach a separate addendum of specific special permits or variance relief applying for:

See Addendum attached hereto.

I certify that the information contained herein is substantially complete and true to the best of my knowledge, under the pains and penalties of perjury.

SIGNATURE:_____ Owner*

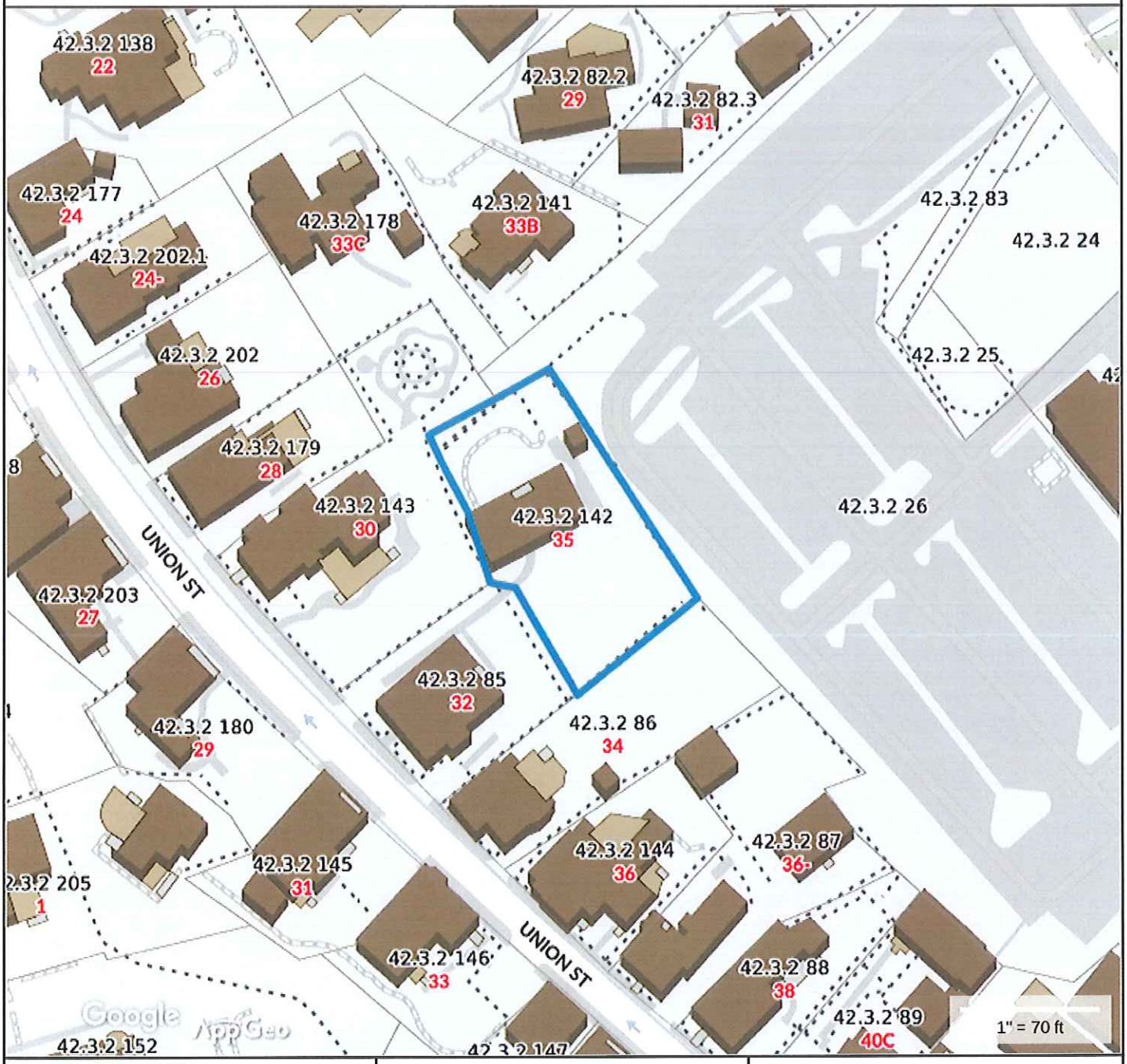
SIGNATURE:_____ Applicant/Attorney/Agent*
Richard P. Beaudette, Esq. (B35)

*If an Agent is representing the Owner or the Applicant, please provide a signed proof of agency.

OFFICE USE ONLY

Application received on:__/__/__ By:_____ Complete:____ Need Copies:_____
Filed with Town Clerk:_/_/_ Planning Board:_/_/_ Building Dept.:_/_/_ By:____
Fee deposited with Town Treasurer:_/_/_ By:____ Waiver requested:_____
Granted:__/__/__ Hearing notice posted with Town Clerk:_/_/__ Mailed:__/__/__
I&M__/__/__ &__/__/__ Hearing(s) held on:__/__/__ Opened on :__/__/__
Continued to:__/__/__ Withdrawn:__/__/__ Decision Due By:__/__/__ Made:__/__/__
Filed w/Town Clerk:__/__/__ Mailed:__/__/__

2 Fairgrounds Road Nantucket Massachusetts 02554
508 325-7587 telephone 508-228-7298 facsimile



Property Information

Property ID	42.3.2 142
Location	35 WASHINGTON ST
Owner	CARTELLI DAMON S & DEBRA A

MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

Town and County of Nantucket, MA makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 11/13/2018
Data updated 11/19/2018

ADDENDUM

i. Introduction

Damon S. Cartelli, and Debra A. Cartelli (the "Applicants"), are the owners of the improved real property located at 35 Washington Street, Nantucket, MA 02554, identified as Parcel 142 on Nantucket Tax Assessors' Map 42.3.2, and is shown as Lot 4 on plan of land recorded at the Nantucket Registry of Deeds in Plan File 46-U (the "Premises"). As shown on Plan 46-U and the existing conditions plan, copies of which are attached hereto as Exhibit A.1 and A.2, the Premises is a 9,930 +/- square foot lot currently located in the Residential Old Historic ("ROH") zoning district. The Applicants purchased the Premises on March 5, 2018, by virtue of Deed recorded in Book 1635, Page 329 at the Nantucket Registry of Deeds, a copy of which is attached hereto as Exhibit B.

ii. Background Information

The Premises and the abutting parcel located at 32 Union Street, Nantucket, MA 02554, shown as Lot 3 on Exhibit A.1, and further identified as Parcel 85 on Nantucket Tax Assessor's Map 42.3.2 ("32 Union Street"), were held in common ownership by Julie W. Parker up until January 17, 1996, when she conveyed title to 32 Union Street to John Kendrick, via deed recorded in Book 493, Page 216 at the Nantucket Registry of Deeds (the "Conveyance").

Prior to the Conveyance, the Nantucket Zoning Board of Appeals issued Julie W. Parker a Variance to allow her to reconfigure the interior lot line between the Premises and 32 Union Street. Said Variance is recorded in Book 463, Page 206, at the Nantucket Registry of Deed (the "Variance", a copy of it is attached hereto as Exhibit C). The Variance was necessary to make the lot line adjustment because both the Premises and 32 Union Street were pre-existing, non-

conforming lots. The variance also validated the Premises' westerly lot line setback intrusion and its 28.28 ± feet[1] of insufficient frontage. The Variance also contains two conditions that prohibits more than one (1) dwelling unit on the Premises and 32 Union Street, or future construction thereon without relief from the Zoning Board of Appeals (the "Conditions").

iii. Proposed Secondary Dwelling

The Applicant desires to construct a secondary dwelling on the Premise and therefore seeks to amend the Variance, pursuant to Nantucket Bylaw Ch. 139 § 32, to remove the Conditions. The Premises and 32 Union Street could have been divided via a M.G. L. Ch. 41 § 81L, instead of being validated via the Variance. Additionally, the Premises and 32 Union Street are now located in the Residential Old Historic ("ROH") zoning district, and as such, are in greater conformity with the intensity regulations than they were when they were zoned R-1. In fact, 32 Union Street complies with Zoning in all aspects, and the Premises complies with the requirements of the ROH zoning district, except for a pre-existing, non-conforming side year setback intrusion, and insufficient frontage. There is ample room to accommodate a secondary dwelling on the Premises as its total lot area, being 9,930 +/- square, is almost twice as large as the 5,000 square foot minimum lot size requirement of the ROH zoning district.

iv. Requested Relief

Therefore, the Applicant respectfully requests that the Board amend the Variance to remove the Conditions and allow the Applicants to construct a secondary dwelling on the Premises.

[1] The R-1 Zoning District required 50 feet of frontage at the time the Variance was issued.

EXHIBIT A.1

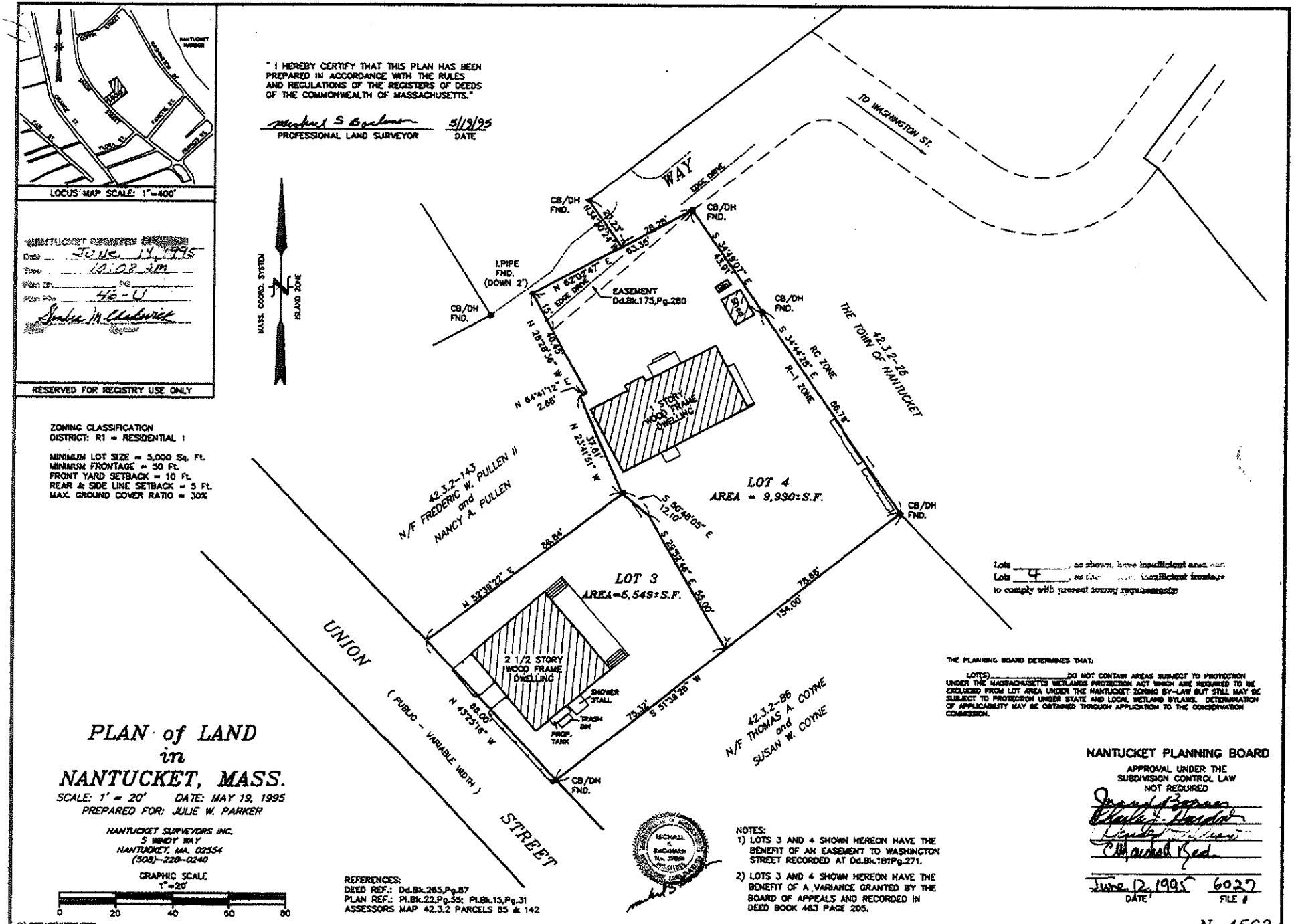

LOCUS MAP SCALE: 1"=400'
NANTUCKET REGISTRY
Date June 14, 1995
Time 12:02 PM
Book 46
Page U
RESERVED FOR REGISTRY USE ONLY
" I HEREBY CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS."
PROFESSIONAL LAND SURVEYOR
5/19/95
DATE
MASS. COORD. SYSTEM ISLAND ZONE
TO WASHINGTON ST.
WAY
EDGE DRIVE
CB/DH FND.
I.PIPE FND. (DOWN 2')
EASEMENT Dd.Bk.175,Pg.280
THE TOWN OF NANTUCKET 42.3.2-26
RC ZONE
R-1 ZONE
1 STORY WOOD FRAME DWELLING
LOT 4
AREA = 9,930± S.F.
LOT 3
AREA=6,549± S.F.
2 1/2 STORY WOOD FRAME DWELLING
SHOWER STALL
TRASH BIN
PROP. TANK
42.3.2-143
N/F FREDERIC W. PULLEN II
NANCY A. PULLEN
42.3.2-86
N/F THOMAS A. COYNE
SUSAN W. COYNE
UNION STREET
(PUBLIC - VARIABLE WIDTH)
N 62°09'47" E 63.36'
S 34°49'07" E 43.91'
N 28°28'36" W 40.45'
N 64°41'12" E 2.66'
N 23°41'51" W 37.61'
S 50°48'05" E 12.10'
S 23°32'46" E 55.00'
S 51°38'28" W 154.00'
N 52°38'22" E 88.84'
N 43°25'16" W 88.00'
S 34°49'07" E 78.28'
S 34°44'28" E 88.78'
78.88'
75.37'
ZONING CLASSIFICATION
DISTRICT: R1 = RESIDENTIAL 1
MINIMUM LOT SIZE = 5,000 Sq. Ft.
MINIMUM FRONTAGE = 50 Ft.
FRONT YARD SETBACK = 10 Ft.
REAR & SIDE LINE SETBACK = 5 Ft.
MAX. GROUND COVER RATIO = 30%
Lots ____, as shown, have insufficient area and
Lots 4, as shown, have insufficient frontage
to comply with present zoning requirements
THE PLANNING BOARD DETERMINES THAT:
LOT(S)_____DO NOT CONTAIN AREAS SUBJECT TO PROTECTION UNDER THE MASSACHUSETTS WETLANDS PROTECTION ACT WHICH ARE REQUIRED TO BE EXCLUDED FROM LOT AREA UNDER THE NANTUCKET ZONING BY-LAW BUT STILL MAY BE SUBJECT TO PROTECTION UNDER STATE AND LOCAL WETLAND BYLAWS. DETERMINATION OF APPLICABILITY MAY BE OBTAINED THROUGH APPLICATION TO THE CONSERVATION COMMISSION.
NANTUCKET PLANNING BOARD
APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED
June 12, 1995
DATE
6027
FILE #
PLAN of LAND in NANTUCKET, MASS.
SCALE: 1" = 20' DATE: MAY 19, 1995
PREPARED FOR: JULIE W. PARKER
NANTUCKET SURVEYORS INC.
5 WINDY WAY
NANTUCKET, MA. 02554
(508)-228-0240
GRAPHIC SCALE
1"=20'
0 20 40 60 80
REFERENCES:
DEED REF.: Dd.Bk.265,Pg.87
PLAN REF.: Pl.Bk.22,Pg.55; Pl.Bk.15,Pg.31
ASSESSORS MAP 42.3.2 PARCELS 85 & 142
NOTES:
1) LOTS 3 AND 4 SHOWN HEREON HAVE THE BENEFIT OF AN EASEMENT TO WASHINGTON STREET RECORDED AT Dd.Bk.181Pg.271.
2) LOTS 3 AND 4 SHOWN HEREON HAVE THE BENEFIT OF A VARIANCE GRANTED BY THE BOARD OF APPEALS AND RECORDED IN DEED BOOK 463 PAGE 205.
N-4563

EXHIBIT A.2

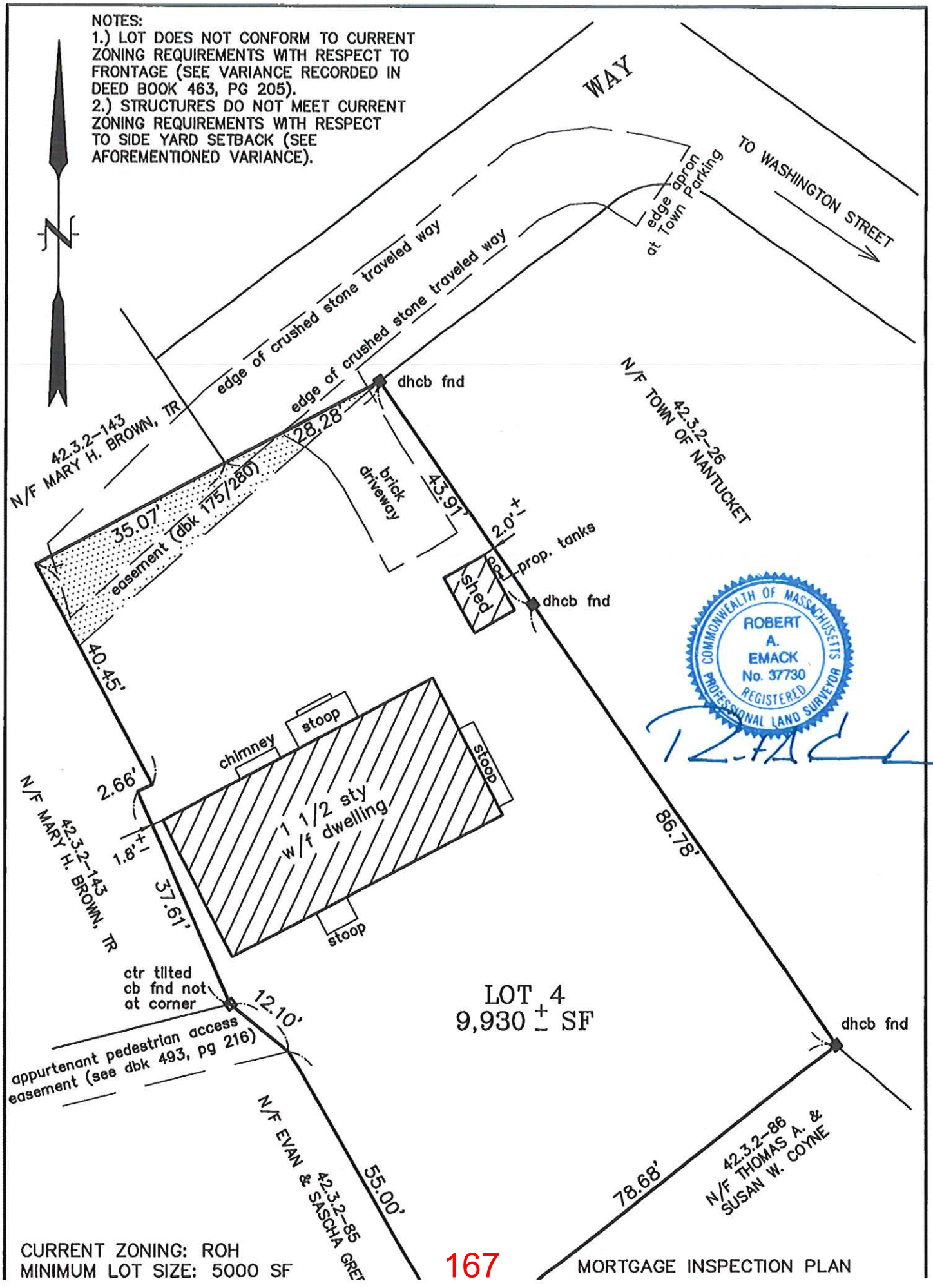

NOTES:
1.) LOT DOES NOT CONFORM TO CURRENT ZONING REQUIREMENTS WITH RESPECT TO FRONTAGE (SEE VARIANCE RECORDED IN DEED BOOK 463, PG 205).
2.) STRUCTURES DO NOT MEET CURRENT ZONING REQUIREMENTS WITH RESPECT TO SIDE YARD SETBACK (SEE AFOREMENTIONED VARIANCE).
WAY
TO WASHINGTON STREET
edge apron at Town Parking
edge of crushed stone traveled way
edge of crushed stone traveled way
dhcb fnd
N/F TOWN OF NANTUCKET
42.3.2-26
42.3.2-143
N/F MARY H. BROWN, TR
28.28'
35.07'
easement (dbk 175/280)
brick driveway
43.91'
2.0'+-
prop. tanks
gas
shed
dhcb fnd
COMMONWEALTH OF MASSACHUSETTS
ROBERT A. EMACK
No. 37730
REGISTERED
PROFESSIONAL LAND SURVEYOR
40.45'
chimney
stoop
stoop
1 1/2 sty w/f dwelling
stoop
2.66'
1.8'+-
N/F MARY H. BROWN, TR
42.3.2-143
37.61'
86.78'
ctr tilted cb fnd not at corner
12.10'
LOT 4
9,930 +- SF
dhcb fnd
appurtenant pedestrian access easement (see dbk 493, pg 216)
N/F EVAN & SASCHA GRE
42.3.2-85
55.00'
78.68'
42.3.2-86
N/F THOMAS A. & SUSAN W. COYNE
CURRENT ZONING: ROH
MINIMUM LOT SIZE: 5000 SF
MORTGAGE INSPECTION PLAN

EXHIBIT B

2018 00000661
Bk: 1635 Pg: 329 Page: 1 of 3
Doc: DD 03/05/2018 01:54 PM

DEED

We, SCOTT DEHM and AMY HAUK, of New Albany, Ohio, for consideration paid in the amount of $2,585,000.00, grant to DAMON S. CARTELLI and DEBRA A. CARTELLI, husband and wife as tenants by the entirety, whose mailing address is 276 Farmington Road, Longmeadow, Massachusetts 01116, with QUITCLAIM COVENANTS,

The land, together with the buildings and improvements thereon commonly known and numbered as 35 Washington Street, formerly known as 32A Union Street, Nantucket Town and County, Commonwealth of Massachusetts 02554, bounded and described as follows:

NORTHWESTERLY by land now or formerly of Mary H. Brown, Trustee of MHB Revocable Trust, and a way as shown on Plan hereinafter referred to, sixty-three and 35/100 (63.35) feet;

NORTHEASTERLY by land now or formerly of the Town of Nantucket, one hundred thirty and 69/100 (130.69) feet;

SOUTHEASTERLY by land now or formerly of Thomas A. Coyne and Susan W. Coyne, seventy-eight and 68/100 (78.68) feet;

SOUTHWESTERLY by Lot 3 as shown on said Plan, on two courses, sixty-seven and 10/00 (67.10) feet; and by land now or formerly of Evan Greenberg and Sascha Greenberg, thirty-seven and 61/100 (37.61) feet; and

NORTHWESTERLY by land now or formerly of said Greenbergs, two and 66/100 (2.66) feet; and

SOUTHWESTERLY by land now or formerly of said Greenbergs, forty and 45/100 (40.45) feet.

Said land is shown as Lot 4 on plan dated May 19, 1995 entitled "Plan of Land in Nantucket, Mass., prepared by Nantucket Surveyors, Inc., recorded with Nantucket Deeds in Plan File 46-U. Said Lot 4 contains 9,930 square feet, more or less, according to said plan.

Said Lot 4 is subject to and has the benefit of the following matters:

(a) Provisions of a Special Permit granted to Julie W. Parker and Jeffrey P. Parker by the Nantucket Board of Appeals, dated November 20, 1992, recorded with Nantucket Deeds in Book 403, Page 243.

(b) Provisions of a Variance granted to Julie W. Parker by the Nantucket Board of Appeals, dated December 16, 1994, recorded with Nantucket Deeds in Book 463, Page 205.

Said Lot 4 is subject to an Easement granted to John N. Welch and Sheila N. Welch, dated May 24, 1980, recorded with Nantucket Deeds in Book 175, Page 280.

For title, see deed recorded with Nantucket Deeds in Book 1330, Page 247.

We certify that we are married to each other and neither of us has an ex-spouse or civil union partner who occupies or intends to occupy the premises as a principal residence or is entitled to claim the benefit of an existing estate of homestead in the property by court order or otherwise, and hereby release any rights of homestead held by us.

* * * * * * * * * * *

Signature Page Follows

Executed as a sealed instrument under the pains and penalties of perjury on February 26, 2018.

✓ _____
Scott Dehm

✓ _____
Amy Hauk

STATE OF OHIO

Franklin Co., ss.

On this 26th day of February, 2018, before me, the undersigned notary public, personally appeared Scott Dehm and Amy Hauk, (a) ✓ personally known to me, or (b) ___ proved to me through satisfactory evidence of identification which was _____, to be the person whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily, as their free act and deed, for its stated purpose and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of their knowledge and belief.

✓ Stacy L. Gessells
Notary Public

Printed name:
My commission expires:

NOTARY PUBLIC STATE OF OHIO

STACY L. GESSELLS
Notary Public, State of Ohio
My Comm. Expires Mar. 14, 2018
2023

MASSACHUSETTS EXCISE TAX
Nantucket County ROD #16 001
Date: 03/05/2018 01:54 PM
Ctrl# 463354 17516 Doc# 00000661
Fee: $11,787.60 Cons: $2,585,000.00

NANTUCKET LAND BANK
CERTIFICATE
☒ Paid $ 51,700
☐
39495 3/5/18
No. Date
Authorization MW

NANTUCKET COUNTY Received & Entered
Attest: Jennifer H. Ferreira Register of Deeds

EXHIBIT C

BOOK 0463 PAGE 205

TOWN OF NANTUCKET

BOARD OF APPEALS

NANTUCKET, MASSACHUSETTS 02554

Date: December , 1994

CERTIFICATE OF GRANTING OF VARIANCE
(Massachusetts General Laws, Chapter 40A, Section 11)

The BOARD OF APPEALS of the TOWN OF NANTUCKET, hereby certifies that a VARIANCE has been GRANTED:

To:(Owner/Applicant) JULIE W. PARKER (073-94)

Address: 253 Meadowbrrok Road, Weston, MA 02193

affecting the rights of the Owner/Applicant with respect to land or building at:

32 and 32A Union Street, Assessor's Map 42.3.2, Parcels 142 and 085, Plan Book 22, Page 55, Lots 1 and 2

Deed Reference: 265/087

And the BOARD OF APPEALS further certifies that the attached Decision is a true and correct copy of its Decision GRANTING the VARIANCE and that copies of the Decision and of all plans referred to in the Decision have been filed with the Planning Board and the Town Clerk.

The BOARD OF APPEALS calls to the attention of the Owner/Applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no VARIANCE or any EXTENSION, MODIFICATION or RENEWAL thereof, shall take effect until (a) a copy of the Decision is certified by the Town Clerk that TWENTY (20) days have elapsed after the Decision has been filed in the office of the Town Clerk and no appeal has been filed (or, if such appeal has been filed, that it has been dismissed or denied) and (b) the certified copy is recorded in the Registry of Deeds for the County of Nantucket and indexed in the grantor index under the name of the Owner of Record or is recorded and noted on the Owner's Certificate of Title. The fee for such recording or registering shall be paid by the Owner/Applicant.

Chairman

Clerk

BOOK 0463 PAGE 206

TOWN OF NANTUCKET

BOARD OF APPEALS

NANTUCKET, MASSACHUSETTS 02554

Assessor's Map 42.3.2
Parcels 142 and 085
R-1

32 and 32A Union Street
Plan Book22, Page 55
Lots 1 and 2

At a Public Hearing of the Nantucket Zoning Board of Appeals held 1:00 P.M., Friday, November 4, 1994, in the Selectmen's Meeting Room, Town and County Building, Broad Street, Nantucket, MA, on the Application of JULIE W. PARKER of 253 Meadowbrook Road, Weston, MA 02193, Board of Appeals File No. 073-94, the Board made the following Decision:

1. Applicant is seeking relief by SPECIAL PERMIT under Nantucket Zoning By-Law §139-33A or in the alternative, a VARIANCE under Nantucket Zoning By-Law §139-16A to reconfigure the interior lot line separating two (2) said to be pre-existing non-conforming lots held in common ownership, so as to create two (2) new separately marketable lots. Each Lot contains a said to be pre-existing non-conforming single family dwelling. Lot 1, 32 Union Street, is said to be nonconforming with respect to the required 10 foot front yard setback, having a structure that is sited 6.5± feet at is closest point from the front yard lot line. Lot 2, 32A Union Street, is said to be non-conforming with respect to the required 5-foot side yard set back having a structure that is sited 2.0± feet at its closest point to the easterly side yard lot line and 1.6± feet at its closest point to the westerly side yard lot line, and is nonconforming as to frontage requirements as the Lot contains 28.3± feet in a zone that requires 50 feet.

The premises is located at 32 and 32A UNION STREET, Assessor's Map 42.3.2, Parcels 142 and 085, as shown in Registry Plan Book 22, Page 55, Lots 1 and 2. The property is zoned Residential-1.

2. The Decision is based upon the Application and materials submitted with it and testimony and evidence presented at the Hearing. There were no letters on file. The Planning Board made an unfavorable recommendation on the grant of relief under Zoning By-Law §139-33A as it did not have any provision for changing the configuration of lots. They further point out that the lots were created in 1983 and thus were not pre-existing non-conforming. They further found that there were no grounds for grant of a Variance.

3. Applicant represents that each Lot conforms to the minimum 5,000-foot lot area requirements of the Residential-1 Zoning District in which they are located with 32 Union Street having a lot area of 9,981 square feet and 32A Union Street having a lot area of 5,496 square feet. 32A Union Street does not conform to the fifty-foot frontage requirements having 28.3± feet of frontage on a way.

Each Lot has a pre-existing non-conforming single-family dwelling on it and each Lot complies with the ground cover requirements for this R-1 Zoning District. The structure on Lot 1 (32 Union Street) does not conform to the ten-foot front yard setback requirement, a portion of the structure being sited 6.5± feet from the front yard lot line. The structure on Lot 2 (32A Union Street) does not conform to the five-foot side yard setback requirement, a portion of the structure being sited 2.0± feet from the easterly side yard lot line and 1.6± feet from the westerly side yard lot line. The reconfiguration of the Lots in 1983 did not change the non-conformities.

4. Applicant further represents that on September 1, 1983 the lot lines of Lots 1 and 2 were altered by a predecessor in title and a plan was filed in the Nantucket Registry of Deeds in Plan Book 22, Page 55 showing the current configuration. This alteration of lot lines caused the pre-existing frontage, front yard and side yard setback non-conformities to lose their "grandfathered" status with respect to zoning but did not cause a technical merger of Lots 1 and 2 because Lots 1 and 2 each arguably satisfy the definition of "Lot" contained in Zoning By-Law §139-2 which states:

> two or more adjacent parcels in common ownership... each of which has been lawfully improved with one or more dwellings conforming to all applicable zoning requirements, if any, at the time of construction thereof, and each of which parcels was in compliance with area and frontage requirements applicable thereto at the time of such construction, shall be considered to be separate lots for all purposes under this By-Law, notwithstanding any subsequently-effective amendment to this By-Law.

However, the frontage, front yard and side yard setback non-conformities became enforceable zoning violations after September 1, 1983 but are no longer enforceable because no enforcement action was initiated by the Town of Nantucket within ten (10) years of the creation of the violation as provided in the curative statute, M.G.L., Chapter 40A, §7 and By-Law §139-25(C)(3).

5. Therefore, the Board finds that the shape of Lots 1 and 2 and the location of the dwellings located thereon are unique to the Lots and do not affect generally the zoning district in which they are located and a literal enforcement of the provisions of this Zoning By-Law would involve substantial hardship, financial or otherwise, to the Applicant and the desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such By-Law.

6. Accordingly, the Board GRANTS the requested VARIANCE relief under Zoning By-Law §139-16A with four (4) in favor (Waine, Williams, Leichter and Hourihan) and one (1) opposed (Angelastro), to allow the reconfiguration of the interior lot line separating Lots 1 and 2 so as to create two (2) separately marketable lots with all of the non-conformities as set forth above, subject to the following conditions:

a. There shall be no further building on the Lots without further relief from this Board;

b. There shall be only one (1) dwelling unit on each Lot; and

c. The reconfiguration of Lots 1 and 2 shall be in conformance with Exhibit "A" attached hereto, a surveyed plot plan dated October 4, 1994 done by licensed surveyor Nantucket Surveyors, Inc. and labeled "Proposed Lot 1" and Proposed Lot 2".

Dated: December 16, 1994

Dale F. Waine

Linda F. Williams

Robert J. Leichter

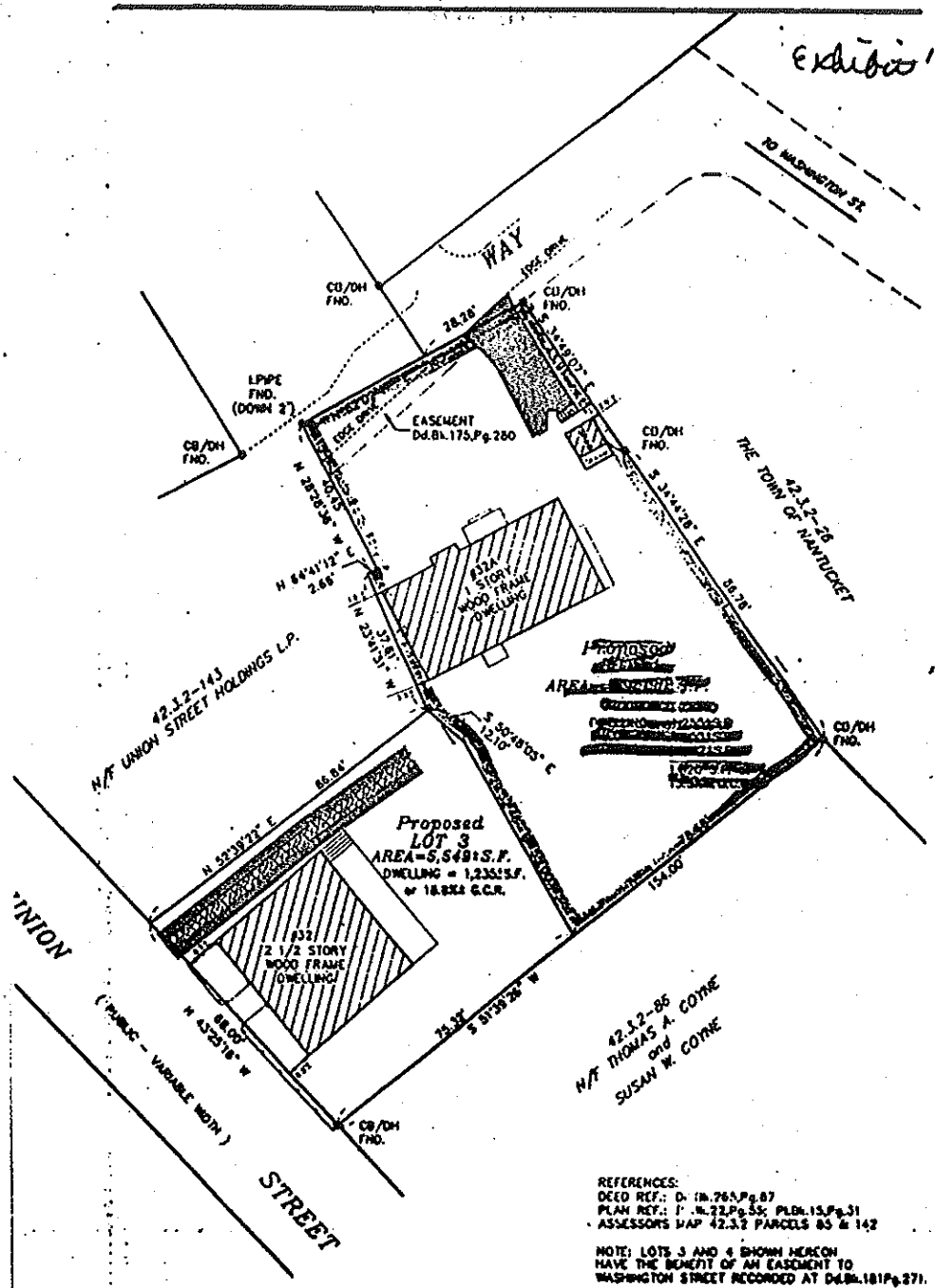
Williams Hourihan

Michael Angelastro

RECEIVED
TOWN CLERK'S OFFICE
NANTUCKET, MA 02554
DEC 16 1994
TIME
CLERK

I CERTIFY THAT 20 DAYS HAVE ELAPSED AFTER DECISION WAS FILED IN THE OFFICE OF THE TOWN CLERK, AND THAT NO APPEAL HAS BEEN FILED PURSUANT TO GENERAL LAWS 40A, SECTION 11
TOWN CLERK
JAN 10 1995

Exhibit A-11



REFERENCES:
DEED REF.: D- Bk.761,Pg.87
PLAN REF.: P- Bk.72,Pg.55; PLBk.15,Pg.31
ASSESSORS MAP 42.3.2 PARCELS 85 & 142

NOTE: LOTS 3 AND 4 SHOWN HEREON HAVE THE BENEFIT OF AN EASEMENT TO WASHINGTON STREET RECORDED AT Dd.Bk.181,Pg.271.

JAN 10 1995 3:05pm
NANTUCKET COUNTY REC'D ENTERED
SANDRA M CHADWICK ATTEST REGISTER

End of Instrument

Town of Nantucket

Zoning Board of Appeals

LIST OF PARTIES IN INTEREST IN THE MATTER OF THE PETITION OF:

PROPERTY OWNER..... CARTELLI, DAMON, S. & DEBRA, A. .....

MAILING ADDRESS..... C/O VDHB&S, 2 Whales Lane, PO BOX 659, Nantucket, MA 02554 .....

PROPERTY LOCATION..... 35 Washington Street .....

ASSESSOR MAP/PARCEL..... 42.3.2 / 142 .....

SUBMITTED BY..... Bryan J. Swain, Esq. .....

SEE ATTACHED PAGES

I certify that the foregoing is a list of all persons who are owners of abutting property, owners of land directly opposite on any public or private street or way; and abutters of the abutters and all other land owners within 300 feet of the property line of owner's property, as they appear on the most recent applicable tax list (M.G.L. c. 40A, Section 1 1 and Zoning Code Chapter 40A, Section 139-29B (2).

Digitally signed by Rob Ranney
DN: cn=Rob Ranney, o=Town of Nantucket, ou=Assessor's Office, email=rranney@nantucket-ma.gov, c=US
Date: 2021.01.06 10:35:11 -05'00'

1-6-2021

DATE

ASSESSOR'S OFFICE
TOWN OF NANTUCKET

Abutters Listing

MBLU	Lot	Lot Cut	Owner Full Name	Co-Owner Full Name	Address Line 1	City
4223	32		NANTUCKET TOWN OF		16 BROAD STREET	NANTUCKET
4223	33		AMICK ROBERT A ETAL		22 WALKER TERRACE	ATLANTA
4223	33	1	SEA OH AIRS LLC		331 MILLER RD	BETHANY
4223	34		NANTUCKET TOWN OF		16 BROAD ST	NANTUCKET
4223	35		RICHMOND GREAT POINT DEV LLC ETAL	C/O WALTER J GLOWACKI	PO BOX 1460	NANTUCKET
4232	21		UNIVERSITY OF FLORIDA FNDTN INC	C/O MORRIS HYLTON III	BOX 115705	GAINESVILLE
4232	24		NANTUCKET TOWN OF		16 BROAD STREET	NANTUCKET
4232	25		NANTUCKET TOWN OF		16 BROAD STREET	NANTUCKET
4232	26		NANTUCKET TOWN OF		16 BROAD ST	NANTUCKET
4232	28		VAN TASSEL JAMES		95 WILDWOOD RD	RIDGEWOOD
4232	28	1	MILLER JERRY W		105 W 29TH STREET PH D	NEW YORK
4232	28	2	11 FAYETTE ST LLC		2870 PEACHTREE RD # 303	ATLANTA
4232	28	3	KREMER PAULA L		409 COMMONWEALTH AVE UNIT D	BOSTON
4232	75		RUTTENBERG MARGARET B & JOHN C	C/O TINICUM ENTERPRISES	990 STEWART AVE	GARDEN CITY
4232	76		STEINBERG DAVID & SARAH		1524 30TH ST NW	WASHINGTON
4232	77		MCCARTHY NANTUCKET HOUSE LLC		2444 THE STRAND	HERMOSA BEACH
4232	79		NOYES GRACE T TRST	RAINBOW TRUST	C/O JAMES NOYES	ASTON
4232	80		NOYES ROBERT K & GRACE T	C/O JAMES NOYES	86 VICTORIA DRIVE	ASTON
4232	81		NOYES GRACE TUTTLE & ROBERT K	C/O JAMES NOYES	86 VICTORIA DRIVE	ASTON
4232	82	1	NANTUCKET MARIA MITCHELL ASSC		2 VESTAL STREET	NANTUCKET
4232	82	2	NANTUCKET MARIA MITCHELL ASSC		4 VESTAL STREET	NANTUCKET
4232	82	3	NANTUCKET MARIA MITCHELL ASSC		2 VESTAL STREET	NANTUCKET
4232	83		NANTUCKET TOWN OF		16 BROAD ST	NANTUCKET
4232	84		NANTUCKET TOWN OF		16 BROAD ST	NANTUCKET
4232	85		GREENBERG SASCHA		115 CENTRAL PARK WEST #23F	NEW YORK

4232	86		COYNE THOMAS A & SUSAN W TR	COYNE FAMILY TRUST	3452 MISTLETOE LN	LONGBOAT KEY
4232	87		WILLIAMS KRISTEN E		1287 UNION STREET	MARSHFIELD
4232	88		LEECH RICHARD E JR & LAURIE H		5 HIGHLAND AV	BINGHAMTON
4232	89	1	PICKERING PROPERTIES ACK LLC		98 THOMAS JEFFERSON LANE	BUFFALO
4232	89	2	WEINMAN RHODA H		PO BOX 1365	NANTUCKET
4232	89	3	ROBINSON JANET LYNN		164 E 72ND ST APT 11A	NEW YORK
4232	89	4	COALE JOHN ETAL		2901 FESSENDEN ST NW	WASHINGTON
4232	91		COYER DIANE PARKER TRUSTEE	41 UNION STREET TRUST	1102 ARDEN ROAD	PASADENA
4232	92		ARON JON & LESLIE LINSLEY		39 UNION ST	NANTUCKET
4232	93		HENSLER JULIE A ETAL		20 HOLLY AVE	CAMBRIDGE
4232	94		HENSLER JULIA A ETAL		20 HOLLY AVE	CAMBRIDGE
4232	95		HENSLER JULIE A ETAL		20 HOLLY AVE	CAMBRIDGE
4232	97		COLLINS PAUL J & ANA B TRS		5315 PORTSMOUTH RD	BETHESDA
4232	138		GLIDDEN RICHARD J TR	CLARA R URBAHN 2015 MANGMNT TRUST	BOX 109	SIASCONSET
4232	141		TOBIN JOANNE		3308 RUNAWAY LANE	NAPLES
4232	142		CARTELLI DAMON S & DEBRA A		276 FARMINGTON RD	LONGMEADOW
4232	143		BROWN MARY H TRST	MHB REVOCABLE TRUST	2999 38TH STREET NW	WASHINGTON
4232	144		FINNEY JOHN R		9 ERWIN PARK	MONTCLAIR
4232	145		THISTLE DEW LLC	C/O BOB HUMPHREY	PO BOX 491	WINNETKA
4232	146		DECK PATRICIA P		30 SILVER HILL ROAD	LINCOLN
4232	147		WEBER FRED C TRST ETAL	C/O WEBER KENDRA	5 STANDISH DRIVE	GLENMONT
4232	148		KOVNER MICHAEL & DEMONTAILLOU JEAN D		25 WILSHIRE RD	GREENWICH
4232	150		AUGUSTINE ROLAND J		14 EAST 75TH ST #5D	NEW YORK
4232	151		ALGER SARAH F TRUSTEE	C/O GREEN SUSAN	161 EAST 35TH ST FIRST FLOOR	NEW YORK
4232	152		ALGER SARAH F TRUSTEE	C/O GREEN SUSAN	161 EAST 35TH ST FIRST FLOOR	NEW YORK
4232	176	1	V & L STROLL LLC		416 S 96TH STREET	OMAHA
4232	176	2	GIFFORD WHITNEY A TR	CLP PROPERTY NOMINEE TRUST	240 WEST CHESTNUT HILL AVE	PHILADELPHIA
4232	177		MAIER ROBERT C & BARBARA BURGESS		335 ESSEX ST	SALEM
4232	178		FEIN DINA TRUSTEE		69B DAY AVENUE	NORTHAMPTON
4232	179		HAFLER JANET P		331 OLD SACHEMS HEAD RD	GUILFORD

4232	180		MOONRAKERS LLC		1205 NORTH ORANGE ST	WILMINGTON
4232	200	1	LITTLE WILLIAM E JR		1107 FIFTH AVE - APT 3N	NEW YORK
4232	201		FROHLING JOAN PENNEY ETAL		62 HOLLAND PARK	LONDON
4232	202		FAHRENKOPF FRANK J ETAL		1110 HARVEY ROAD	MACLEAN
4232	202	1	FEDRIGOTTI CARLOS M & SUZANNE		16 SOUTH ROAD	BRONXVILLE
4232	203		27 UNION STREET LLC	C/O COPLEY MNGMNT & DEV CORP	896 BEACON STREET	BOSTON
4232	204		GREENBERG JUDITH	C/O HERITAGE MANAGEMENT CO	PO BOX 627	RIDGEWOOD
4232	205		BROWN BROS HARRIMAN TR CO TRST	GORHAMS COURT TRUST	140 BROADWAY	NEW YORK
4232	217		34 ORANGE STREET LLC	C/O SCOTT LAURIE	P O BOX 140342	BOSTON
4232	218		DIDRIKSEN STEPHEN P ETAL		25 UNION ST	NANTUCKET
4232	219		LANGDALE HOLDINGS II LLC	C/O CT CORP SYSTEM	800 CAPITOL ST SUITE 2070	HOUSTON
Count:	**66**					

State	Zip	Location
MA	02554	5 FAYETTE ST
GA	30309	1 FAYETTE ST
CT	06524	3 FAYETTE ST
MA	02554	39 WASHINGTON ST
MA	02554	53 WASHINGTON ST
FL	32611	8 COFFIN ST
MA	02554	WASHINGTON ST
MA	02554	WASHINGTON ST
MA	02554	WASHINGTON ST
NJ	07450	42 B UNION ST
NY	10001-5749	13 FAYETTE ST
GA	30305	11 FAYETTE ST
MA	02215	42 A UNION ST
NY	11530	20 UNION ST
DC	20007	18 COFFIN ST
CA	90254	12 COFFIN ST
PA	19014	10 COFFIN ST
PA	19014	25R WASHINGTON ST
PA	19014	27 WASHINGTON ST
MA	02554	33 WASHINGTON ST
MA	02554	29 WASHINGTON ST
MA	02554	31 WASHINGTON ST
MA	02554	WASHINGTON ST
MA	02554	37 WASHINGTON ST
NY	10023	32 UNION ST

FL	34228	34 UNION ST
MA	02050	36- UNION ST
NY	13905	38 UNION ST
NY	14226	40A UNION ST
MA	02554	40C UNION ST
NY	10021	40D UNION ST
DC	20008	40B UNION ST
CA	91106	41 UNION ST
MA	02554	39 UNION ST
MA	02138	3 FLORA ST
MA	02138	3 FLORA ST
MA	02138	3 FLORA ST
MD	20816	48 ORANGE ST
MA	02564	22 UNION ST
FL	34114	33B WASHINGTON ST
MA	01116	35 WASHINGTON ST
DC	20016-5402	30 UNION ST
NJ	07042	36 UNION ST
IL	60093	31 UNION ST
MA	01773	33 UNION ST
NY	12077	35 UNION ST
MA	06831	37 UNION ST
NY	10021	3 CASHS CT
NY	10016	46 ORANGE ST
NY	10016	44 ORANGE ST
NE	68114	23B UNION ST
PA	19118	23A UNION ST
MA	01970	24 UNION ST
MA	01060	33C WASHINGTON ST
CT	06437	28 UNION ST

DE	19801	29 UNION ST
NY	10128	32 ORANGE ST
.	W11 3SJ	23 UNION ST
VA	22101	26 UNION ST
NY	10708	24- UNION ST
MA	02115	27 UNION ST
NJ	07451	2 GORHAMS CT
NY	10005	1 GORHAMS CT
MA	02114-0342	34 ORANGE ST
MA	02554	25 UNION ST
TX	77002	36 ORANGE ST

NANTUCKET TOWN OF
16 BROAD STREET
NANTUCKET, MA 02554

AMICK ROBERT A ETAL
22 WALKER TERRACE
ATLANTA, GA 30309

SEA OH AIRS LLC
331 MILLER RD
BETHANY, CT 06524

NANTUCKET TOWN OF
16 BROAD ST
NANTUCKET, MA 02554

RICHMOND GREAT POINT DEV LLC ETAL
C/O WALTER J GLOWACKI
PO BOX 1460
NANTUCKET, MA 02554

UNIVERSITY OF FLORIDA FNDTN INC
C/O MORRIS HYLTON III
BOX 115705
GAINESVILLE, FL 32611

NANTUCKET TOWN OF
16 BROAD STREET
NANTUCKET, MA 02554

NANTUCKET TOWN OF
16 BROAD STREET
NANTUCKET, MA 02554

NANTUCKET TOWN OF
16 BROAD ST
NANTUCKET, MA 02554

VAN TASSEL JAMES
95 WILDWOOD RD
RIDGEWOOD, NJ 07450

MILLER JERRY W
105 W 29TH STREET PH D
NEW YORK, NY 10001-5749

11 FAYETTE ST LLC
2870 PEACHTREE RD # 303
ATLANTA, GA 30305

KREMER PAULA L
409 COMMONWEALTH AVE UNIT D
BOSTON, MA 02215

RUTTENBERG MARGARET B & JOHN C
C/O TINICUM ENTERPRISES
990 STEWART AVE
GARDEN CITY, NY 11530

STEINBERG DAVID & SARAH
1524 30TH ST NW
WASHINGTON, DC 20007

MCCARTHY NANTUCKET HOUSE LLC
2444 THE STRAND
HERMOSA BEACH, CA 90254

NOYES GRACE T TRST
RAINBOW TRUST
C/O JAMES NOYES
ASTON, PA 19014

NOYES ROBERT K & GRACE T
C/O JAMES NOYES
86 VICTORIA DRIVE
ASTON, PA 19014

NOYES GRACE TUTTLE & ROBERT K
C/O JAMES NOYES
86 VICTORIA DRIVE
ASTON, PA 19014

NANTUCKET MARIA MITCHELL ASSC
2 VESTAL STREET
NANTUCKET, MA 02554

NANTUCKET MARIA MITCHELL ASSC
4 VESTAL STREET
NANTUCKET, MA 02554

NANTUCKET MARIA MITCHELL ASSC
2 VESTAL STREET
NANTUCKET, MA 02554

NANTUCKET TOWN OF
16 BROAD ST
NANTUCKET, MA 02554

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