



Planning and Land Use Services

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

Date: 12/6/2022
To: Zoning Board of Appeals
From: Billy Saad
Land Use Specialist
RE: Staff Report for 12-8-22 ZBA Meeting

I. APPROVAL OF THE MINUTES:

- November 10, 2022

Staff reviewed the minutes. We recommend approval.

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

09-22 Harris on Weweeder, LLC <i>Continued to January 12, 2023</i>	50 Weweeder Avenue <i>Sitting: SM, EA, MO, GT, MP</i>	Brescher
37-21 Kristina & Nicholas Amendolare <i>Continued to January 12, 2023</i>	8 Bank Street <i>Sitting: SM, LB, MO, EA, JM</i>	Williams

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

10-22 Paul P. Moran & Jean M. Moran <i>Continued to January 12, 2023</i>	4 Washington Ave	Santos
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15-22 Christopher Quick	15 Delaney Rd	Kristen Gagalis
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Applicant is appealing the Building Commissioner's September 21, 2022 determination pursuant to Zoning Code Section 139-31A-(1) and Massachusetts General Laws Chapter 40A, Sections 8 and 15. The Building Commissioner determined that use of the Property for short-term rentals ("STR") does not violate Nantucket's Zoning Bylaw. Locus subject to the appeal is situated at 15 Delaney Road, shown on Assessor's Map 30 as Parcel 635 and upon Land Court Plan 14695-C. Evidence of the owner's title is registered on Certificate of Title No. 25803 with the Nantucket County District of the Land Court. The site is zoned Residential 1 (R1).

This is an Appeal of the Building Inspector's determination that the use of the property for Short Term Rentals (STRs) does not violate the Zoning By-law. The Appellant's Addendum/Memo filed with the Appeal is on Pages 31-36 of the packet, the central premise of which is that the exclusive use of the property for STRs constitutes a commercial use in a residential zone and would be more properly characterized as a "Transient Residential Facility" and therefore creates a compliance issue with the By-law. The letter from Paul Murphy dated 9/21/2022 is on Page 29 of the packet.

M.G.L. Chapter 40A Section 8.

An appeal to the permit granting authority as the zoning ordinance or by-law may provide, may be taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of this chapter, by the regional planning agency in whose area the city or town is situated, or by any person including an officer or board of the city or town, or of an abutting city or town aggrieved by an order or decision of the inspector of buildings, or other administrative official, in violation of any provision of this chapter or any ordinance or by-law adopted thereunder.

The relevant sections of the By-law are:

Section 139-29.E(1)

(1) The Board of Appeals shall have the following powers:

[...]

(d) To hear and decide appeals from decisions of the Zoning Enforcement Officer.

Section 139-31.A(1) AN APPEAL TO THE BOARD OF APPEALS (OR TO THE ZONING ADMINISTRATOR IF AUTHORIZED TO HEAR SUCH APPEAL) MAY BE TAKEN:

By any person aggrieved by reason of his inability to obtain a permit or enforcement action from the Building Commissioner [see § 139-25B(1) above], the Zoning Enforcement Officer, or from any other administrative officer under the provisions of this chapter; or

139-31.E (3)

The **concurring vote of at least four members** of the Board of Appeals shall be necessary to reverse any order or decision of any administrative official under this chapter.

The Board has reviewed similar appeals in the past and has stated that "as a regulatory body rather than a policy-making body, they are charged with determining whether the use could be construed as commercial according to the Zoning By-law as it currently exists". The Board has also stated that "Town Meeting is the appropriate forum to address and regulate STRs in order to establish more specific guidelines regarding what constitutes an acceptable threshold for this type of use".

Two previous appeal decisions are attached at the end of the staff report for reference.

17-22 Nantucket Cottage Hospital**16 Vesper Ln****Jeanette Ives Erickson**

Applicant is seeking Variance relief pursuant to Nantucket Zoning ByLaw Section 139-16 in order to divide an existing lot, which is nonconforming as to frontage, into two lots, both of which will not meet the required frontage of 50 feet in the CN district. Both lots will be accessed via an easement from Vesper Lane. Locus is situated at 16 Vesper Lane, shown on Assessor's Map 34 as Parcel 72 and shown as Lot 1 with the Nantucket County Registry of Deeds. Evidence of owner's title is recorded in Book 184 and Page 112 with the Nantucket County Registry of Deeds. The site is zoned Commercial Neighborhood (CN).

The Applicant is seeking Variance relief from the required 50' of frontage within the Commercial Neighborhood (CN) zoning district. The locus is an oversized rear lot with no existing frontage. It is accessed by an easement through Gouin Village. Applicant is proposing to divide the lot into 2, one of which will be retained by Nantucket Cottage Hospital and the other conveyed to the Affordable Housing Trust Fund for the development of affordable housing. An access easement for the AHTF lot will be provided through Gouin Village and over the NCH site.

In Appendix A (Pages 216 – 217 of the packet), the Applicant has made a compelling argument as to why Variance relief may be granted.

Jeff McDermott, Et Al**32 Monomoy Rd****Nina Pickering-Cook**

Applicants are appealing the Building Commissioner's October 31, 2022 determination pursuant to Zoning Code Section 139-31A-(1) and Massachusetts General Laws Chapter 40A, Sections 8 and 15. The Building Commissioner determined that use of the Property for short-term rentals ("STR") does not violate Nantucket's Zoning Bylaw. Locus subject to the appeal is situated at 32 Monomoy Road, shown on Assessor's Map 54 as Parcel 242 and upon Land Court Plan 14974-C. Evidence of owner's title is registered on Certificate of Title No. 25823 with the Nantucket County District of the Land Court. The site is zoned Limited Use General 1 (LUG-1).

This is an Appeal of the Building Inspector's determination that the use of the property for Short Term Rentals (STRs) does not violate the Zoning By-law. The Appellant's Addendum/Memo filed with the Appeal is on Pages 125-129 of the packet, the central premise of which is that the exclusive use of the property for STRs constitutes a commercial use in a residential zone and would be more properly characterized as a "Transient Residential Facility" and therefore creates a compliance issue with the By-law. The letter from Paul Murphy dated 10/31/2022 is on Page 123 of the packet.

M.G.L. Chapter 40A Section 8.

An appeal to the permit granting authority as the zoning ordinance or by-law may provide, may be taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer **under the provisions of this chapter, by the regional planning agency in whose area the city or town is situated, or by any person including an officer or board of the city or town, or of an abutting city or town aggrieved by an order or decision of the inspector of buildings, or other administrative official, in violation of any provision of this chapter or any ordinance or by-law adopted thereunder.**

The relevant sections of the By-law are:

Section 139-29.E(1)

(1) The Board of Appeals shall have the following powers:

[...]

(d) To hear and decide appeals from decisions of the Zoning Enforcement Officer.

Section 139-31.A(1) **AN APPEAL TO THE BOARD OF APPEALS (OR TO THE ZONING ADMINISTRATOR IF AUTHORIZED TO HEAR SUCH APPEAL) MAY BE TAKEN:**

By any person aggrieved by reason of his inability to obtain a permit or enforcement action from the Building Commissioner [see § 139-25B(1) above], the Zoning Enforcement Officer, or from any other administrative officer under the provisions of this chapter; or

139-31.E (3)

The **concurring vote of at least four members** of the Board of Appeals shall be necessary to reverse any order or decision of any administrative official under this chapter.

The Board has reviewed similar appeals in the past and has stated that “as a regulatory body rather than a policy-making body, they are charged with determining whether the use could be construed as commercial according to the Zoning By-law as it currently exists”. The Board has also stated that “Town Meeting is the appropriate forum to address and regulate STRs in order to establish more specific guidelines regarding what constitutes an acceptable threshold for this type of use”.

The 14 New Mill St appeal decision is attached at the end of the staff report for reference.

IV. ADJOURNMENT (VOTE WILL BE TAKEN)

NANTUCKET
TOWN CLERK

2022 JAN 20 PM 3:06

**TOWN OF NANTUCKET
BOARD OF APPEALS
NANTUCKET, MASSACHUSETTS 02554**

Date: January 18, 2022

To: Parties in Interest and Others concerned with the
Decision of The BOARD OF APPEALS in the Application of the
following:

Application No: 36-21

Applicant/ PRIOR OWNER: CATHERINE S. WARD

Enclosed is the Decision of the BOARD OF APPEALS which has this
day been filed with the office of the Nantucket Town Clerk.

An Appeal from this Decision may be taken pursuant to Section 17
of Chapter 40A, Massachusetts General Laws.

Any action appealing the Decision must be brought by filing a
complaint in Nantucket Superior Court or Land Court within TWENTY
(20) days after this day's date. Notice of the action with a copy
of the complaint and certified copy of the Decision must be given
to the Town Clerk so as to be received within such TWENTY (20)
days.

Leslie Woodson Snell, AICP
Zoning Administrator

cc: Town Clerk
Planning Board
Building Commissioner/Zoning Enforcement Officer

PLEASE NOTE: MOST SPECIAL PERMITS AND VARIANCES HAVE A TIME LIMIT
AND WILL EXPIRE IF NOT ACTED UPON ACCORDING TO NANTUCKET ZONING
BY-LAW SECTION 139-30 (SPECIAL PERMITS); SECTION 139-32
(VARIANCES). ANY QUESTIONS, PLEASE CALL THE NANTUCKET ZONING BOARD
OF APPEALS OFFICE AT 508-325-7587.

NANTUCKET ZONING BOARD OF APPEALS
2 Fairgrounds Road
Nantucket, Massachusetts 02554

Assessor's Map 55.1.4, Parcel 189
9 West Dover Street
Residential Old Historic (ROH)

Book 1581, Page 238
Plan Book 7, Page 29

OWNERS: Peter A. Grape and Linda Oliver Grape

DECISION:

1. At a public hearing of the Nantucket Zoning Board of Appeals (the "Board") on Thursday, November 22, 2021, held remotely *via Zoom*¹, the Board made the following decision on the appeal filed by **Catherine S. Ward**, with a mailing address of 4A Silver Street, Nantucket, Massachusetts 02554, **File No. 36-21**.
2. Appellant brings an appeal, pursuant to Massachusetts General Laws Chapter 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 9 West Dover Street as a short-term rental ("STR") is not a prohibited use 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 a STR. The Locus is situated at 9 West Dover Street, is shown on Assessor's Map 55.1.4 as Parcel 189, and in Plan Book 7, Page 29. Evidence of title to 9 West Dover Street is recorded in Book 1581, Page 238 on file at the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).
3. Our decision is based upon the application and accompanying materials, representations, and testimony received at our public hearing. There was no Planning Board recommendation on the basis that no matters of planning concern were presented. There was oral and written testimony and comments from the various parties during the public hearing.
4. Appellant Catherine S. Ward did not have legal representation at the meeting. Attorney Robert McLaughlin spoke on behalf of the owners of the subject Locus, namely Peter A. Grape and Linda Oliver Grape. Building Commissioner Paul Murphy also spoke at the hearing, along with several interested parties.

¹*This Open Meeting of the Nantucket Zoning Board of Appeals was conducted remotely consistent with Governor Baker's Executive Order of March 12, 2020, due to the current State of Emergency in the Commonwealth due to the outbreak of the "COVID-19 Virus."*

5. In a letter, dated September 24, 2021, addressed to Catherine S. Ward, the Commissioner declined a request for enforcement against the Locus based upon a determination that the use of the property for short-term rentals does not violate the zoning by-law. The Appellant subsequently requested that the Board overturn the decision of the Building Commissioner and find that the owner renting their property on a short-term basis is a commercial use not allowed in the ROH district and further require the owner to immediately cease and desist this use of the premises as a short-term rental. The Appellant maintains: the use of the property for Short Term Rentals (STRs) constitutes a commercial use in a residential zone and therefore violates the By-law.
6. The appellant, Catherine S. Ward, stated that she has owned her home at 4A Silver Street since 1993 and has resided there full time since 2010. During those years, in her opinion the neighborhood had always been “stable” and residents respected the privacy of others. She addressed her belief that multiple STR’s exist in the area and described 9 West Dover as a “hotel” and incompatible with the ROH zoning district. Ms. Ward stated the arrival of “happy vacationers” spending time on the patio at 9 West Dover Street and enjoying the property disrupts her use of her property. Some of the disruptions coming from the patio area of 9 West Dover Street she mentioned to the Board included, but were not limited to, people playing games, music in the outdoor shower, use of cell phones, lights being left on at night, and babies crying. Ms. Ward expressed the opinion that the “unsupervised mini-hotels” that have “sprung up” are ruining the summer for other residents of the area.
7. Various owners of abutting properties and interested parties to the appeal expressed support for the appeal, describing how STRs for profit are disruptive, transient, and adversely impact the character and quality of life in the neighborhood.
8. Attorney McLaughlin represented that his client’s current use of 9 West Dover Street is lawful and refuted the basis of the request for enforcement and appeal, maintaining that the Appellant does not have the proper standing to file an appeal. He stated that even if she did have standing, the house is principally being used as a single-family house, regardless of who stays there or for how long. He noted the frequency the owners use the property for personal use with their family, and that they stay in the garage apartment during the times the main house is used as a short-term rental. He pointed out that the Board should focus on matters pertaining to zoning which regulate use and dimensions. He suggested that Town Meeting is the appropriate way for the community to address this if it is considered a community-wide concern. He urged the Board to uphold the Building Commissioner’s determination and deny the Appeal.
9. Building Commissioner Paul Murphy spoke at the hearing and stated that short term rentals do not violate the Nantucket Zoning Bylaw.

10. The appeal is filed pursuant to the following provisions:

M.G.L. Chapter 40A Section 8.

An appeal to the permit granting authority as the zoning ordinance or by-law may provide, may be taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of this chapter, by the regional planning agency in whose area the city or town is situated, or by any person including an officer or board of the city or town, or of an abutting city or town aggrieved by an order or decision of the inspector of buildings, or other administrative official, in violation of any provision of this chapter or any ordinance or by-law adopted thereunder.

The relevant sections of the Nantucket Zoning By-law are:

Section 139-29.E(1)

(1) The Board of Appeals shall have the following powers:

[...]

(d) To hear and decide appeals from decisions of the Zoning Enforcement Officer.

Section 139-31.A(1) *AN APPEAL TO THE BOARD OF APPEALS (OR TO THE ZONING ADMINISTRATOR IF AUTHORIZED TO HEAR SUCH APPEAL) MAY BE TAKEN:*

By any person aggrieved by reason of his inability to obtain a permit or enforcement action from the Building Commissioner [see § 139-25B(1) above], the Zoning Enforcement Officer, or from any other administrative officer under the provisions of this chapter; or

11. After taking testimony from the above-cited legal representatives, their clients, and the Building Commissioner, a majority of members of the Board found the evidence insufficient to overturn the Building Commissioner. They determined that Commissioner Murphy appropriately applied the plain language of the By-law and that his decision to decline the request for zoning enforcement action was based upon an appropriate determination that the use of the Locus complies with allowable residential use. The Board felt it was important to focus on interpreting and applying the specific provision of the Nantucket Zoning By-law to this specific property. Questions of policy creation and enforcement should fall to the community in the context of Annual Town Meeting. Consequently, the Board members arrived at a consensus that the evidence presented was insufficient to prove that Commissioner Murphy's refusal to pursue zoning enforcement was improper.
12. There was discussion of what has become customary with rentals of private properties where frequent turnover occurs. The Appellant and interested parties reiterated that the anonymity and frequency of rentals occasionally lead to a lack of deference for the other residents of the neighborhood and as a result impinge upon their quiet enjoyment of their own properties. Board members concluded that the Appellants complaints, including, but not limited to, music playing in an outdoor shower, babies crying, cell phone calls, and use of the backyard

resulting in sounds being heard by neighbors are consistent and typical with single family use and might occur at any or all single-family properties, whether or not the property is used as a STR.

13. The Board agreed that, as a regulatory body rather than a policy-making body, they are charged with determining whether the use in this particular instance could be construed as commercial according to the Zoning By-law as it currently exists. The Board arrived at a consensus that the evidence and testimony brought to bear were not sufficiently compelling to warrant overturning the decision of the Building Commissioner.
14. Furthermore, the Board concurred that Town Meeting is the appropriate forum to address and regulate STRs in order to establish more specific guidelines regarding what constitutes an acceptable threshold for this type of use. Conversely, such proposed By-Laws should take into consideration unintended consequences for the island and its inhabitants.
15. A **MOTION** was made by Geoff Thayer and duly seconded by Elisa Allen to, for the reasons discussed during the Board's deliberations, uphold the determination of the Building Commissioner and to deny the appeal. The vote was conducted by roll call vote with five (McCarthy, Allen, Thayer, O'Mara, and Poor) in favor of the motion and zero (0) against the motion. The **Motion carried** unanimously and, therefore, the **APPEAL IS DENIED and the decision of the Building Commissioner is upheld.**

Assessor's Map 55.1.4, Parcel 189
9 West Dover Street
Residential Old Historic (ROH)

Book 1581, Page 238
Plan Book 7, Page 29

Dated: November 22, 2021


Susan McCarthy


Elisa Allen


Geoff Thayer N.D.S.


Michael O'Mara N.D.S.

Mark Poor

COMMONWEALTH OF MASSACHUSETTS

County of Nantucket, ss

On the 19 day of January, 2022, before me, the undersigned notary public, personally appeared Susan McCarthy, one of the above-named members of the Zoning Board of Appeals of Nantucket, Massachusetts, personally known to me to be the person whose name is signed on the preceding document, and acknowledged that they signed the foregoing instrument as their free act and deed and voluntarily for the purposes therein expressed.



Official Signature and Seal of Notary Public
My commission expires:

March 28, 2028
Esmeralda Martinez



ESMERALDA C. MARTINEZ
Notary Public
Commonwealth of Massachusetts
My Commission Expires
March 28, 2028



NANTUCKET
TOWN CLERK

2021 MAR -8 PM 3:39

**TOWN OF NANTUCKET
BOARD OF APPEALS
NANTUCKET, MASSACHUSETTS 02554**

Date: March 2, 2021

To: Parties in Interest and Others concerned with the Decision of
The BOARD OF APPEALS in the Application of the following:

Application No.: 02-21

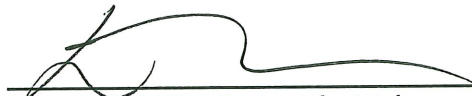
Applicant/Appellant: ACK*Now
Owner: 14 New Mill Street LLC

Property Description: 14 New Mill Street
Map 55.4.4, Parcel 133

Enclosed is the Decision of the BOARD OF APPEALS which has this
day been filed with the office of the Nantucket Town Clerk.

An Appeal from this Decision may be taken pursuant to Section 17
of Chapter 40A, Massachusetts General Laws.

Any action appealing the Decision must be brought by filing a
complaint in Nantucket Superior Court or Land Court within TWENTY
(20) days after this day's date. Notice of the action with a copy
of the complaint and certified copy of the Decision must be given
to the Town Clerk so as to be received within such TWENTY (20)
days.



Eleanor W. Antonietti,
Zoning Administrator

cc: Town Clerk
Planning Board
Building Commissioner/Zoning Enforcement Officer

PLEASE NOTE: MOST SPECIAL PERMITS AND VARIANCES HAVE A TIME LIMIT AND
WILL EXPIRE IF NOT ACTED UPON ACCORDING TO NANTUCKET ZONING BY-LAW
SECTION 139-30 (SPECIAL PERMITS); SECTION 139-32 (VARIANCES). ANY
QUESTIONS, PLEASE CALL THE NANTUCKET ZONING BOARD OF APPEALS OFFICE AT
508-325-7587.

NANTUCKET ZONING BOARD OF APPEALS
2 Fairgrounds Road
Nantucket, Massachusetts 02554

Assessor's Map 55.4.4, Parcel 133
14 New Mill Street
Residential Old Historic (ROH)
OWNER: 14 New Mill Street, LLC

Book 1559, Page 133
Plan Book 14, Page 17
Lot A-1

DECISION:

1. At a public hearing of the Nantucket Zoning Board of Appeals (the "Board") on Thursday, February 11, 2021, held remotely *via Zoom*¹, the Board made the following decision on the appeal filed by **ACK*NOW**, with a mailing address of P.O. Box 569, Nantucket, Massachusetts 02554, **File No. 02-21**.
2. Appellant brings an appeal, pursuant to Massachusetts General Laws Chapter 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") is not a prohibited use 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 a 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).
3. Our decision is based upon the application and accompanying materials, representations, and testimony received at our public hearing. There was no Planning Board recommendation on the basis that no matters of planning concern were presented. There was oral and written testimony and comments from the various parties during the public hearing.
4. Attorney Nina Pickering-Cook represented the Appellant ACK*Now and five property owners who are abutters to the Locus and interested parties to the Appeal, namely Mark and Rosanne WELSHIMER, Jane and Keith LINDGREN, Esta Lee and Harris STONE, John KILMARTIN, III, and J. Tristram and Beverly DAMMIN. Town Counsel, Alex

¹*This Open Meeting of the Nantucket Zoning Board of Appeals was conducted remotely consistent with Governor Baker's Executive Order of March 12, 2020, due to the current State of Emergency in the Commonwealth due to the outbreak of the "COVID-19 Virus."*

Weisheit advised the Board at the hearing. Attorney Robert McLaughlin spoke on behalf of the owner of the subject Locus, namely 14 New Mill Street, LLC. Commissioner Murphy also spoke at the hearing, along with several interested parties who support the appeal.

5. In a letter, dated December 1, 2020, addressed to Attorney Pickering-Cook, the Commissioner declined a request for enforcement against the Locus based upon a determination that the use of the property for short-term rentals does not violate the zoning by-law. The Appellant subsequently requested that the Board overturn the decision of the Building Commissioner and find that the property is a commercial use that is not allowed in the ROH district and further requiring the owner to immediately cease and desist the “commercial operation” upon the premises. The Appellant maintains that the exclusive use of the property for Short Term Rentals (STRs) constitutes a commercial use in a residential zone and would be more properly characterized as a “Transient Residential Facility” and therefore violates the By-law.
6. Attorney Pickering-Cook clarified that the appeal is not taking issue with traditional rentals of homes by resident owners. The primary question underpinning the appeal is whether the ongoing rental of an investor-owned property, which is not used as a year-round primary or secondary residence, is a legitimate use within a residential zone. The subject property is being used exclusively by customers for temporary lodging. The criteria cited by the Appellants as relevant to overturning of the Commissioner’s determination were described as follows: 1) advertisement on various vacation websites; 2) operation of a business through the property for commercial purposes; 3) rental to unrelated parties; 4) no Nantucket resident has lived upon the subject premises as a primary residence since its purchase by the current owner in 2016; and 5) negative impacts upon the neighborhood such as increased traffic, parking, noise, disruption, and lack of accountability.
7. Attorney Pickering-Cook urged the Board to rely on case law which, she argued, should be applied in the present circumstances to support the assertion that STRs are a commercial use and should be prohibited in residential zones. Specifically, she maintained that STRs are “business enterprises operating for financial gain” and that the relevant case law hinges on the “commercial nature of the operation and the transient nature of the occupants.” According to Attorney Pickering-Cook, the predominant factors that guided the court case decisions are 1) none of the owners reside upon the premises; 2) all transactions take place at an arm’s length with unknown third parties; 3) the sole use of the property by the owner is for financial gain of its investors; 4) frequency and continuing basis of renting to strangers; and 5) nonstop coming and going of different people that destroy the concept of continuity, community, and supervision.

8. Attorney Pickering-Cook claimed that the Nantucket Zoning By-law supports the grounds for the appeal based upon the concept of the transient residential facility and the embedded preference for owner occupied rentals. According to Attorney Pickering-Cook, investor-owned STRs are arguably more closely related to the definition of Lodging, Rooming, or Guest House and Transient Residential Facility found in Section 139-2.A of the Bylaw, cited in Paragraph #13 below.
9. Various owners of abutting properties and interested parties to the appeal expressed support for the appeal, describing how anonymous STRs for profit are disruptive, transient, and adversely impact the character and quality of life in the neighborhood. Julia Lindner, Executive Director of ACK*Now, explained that her organization has been researching the growing trend of STRs both nationally and on Nantucket and the concomitant emergence of STR businesses managed by investor-owners. She attested that the impact is different than that of traditional vacation rentals because investor-owned STRs convert homes into businesses, remove year-round housing stock, and push home prices and year-round rents higher. She stated that ACK*Now and the community are looking to solve the housing crisis and create a system of accountability for investor-owned STRs.
10. Attorney McLaughlin represented that his client's current use of 14 New Mill Street is lawful and refuted the basis of the request for enforcement and appeal, maintaining that the Appellant does not have the proper agency or legal standing to file an appeal, that the cited case law does not adequately support the assertions, and that the house is principally being "used as a single family house, regardless of who stays there or for how long". He pointed out that the Board should focus on matters pertaining to zoning which regulate use and dimensions. He further argued that the threshold for sufficient legal standing of persons "aggrieved" has not been established by the Appellant and that the jurisdictional and statutory requirements of Massachusetts General Law Chapter 40A Sections 8 and 17 have not been met. He suggested that Town Meeting is the appropriate way for the community to address this if it is considered a community-wide concern. He urged the Board to uphold the Building Commissioner's determination and deny the Appeal.
11. Town Counsel Weisheit explained that the Board has the authority to express concern about standing, but ultimately matters of standing lie more properly within the purview of the court system. He advised the Board to focus on the merits of the case rather than the issue of standing. He further explained that the standard of review in examining the Building Commissioner's decision is comparable to a *de novo* case whereby the Board shall determine if the actions taken by the Building Commissioner in this instance are reasonable according to the Board's interpretation of the Zoning By-law.

12. Building Commissioner Paul Murphy spoke at the hearing and explained that his position as iterated in the aforementioned letter of December 1, 2020, is that the renting of homes is a permitted use regardless of who owns a property or the frequency of change in tenancy. This is not unique or new to Nantucket. The By-law would need to be changed at Town Meeting in order for enforcement of this particular type of situation to occur. He defended his decision on the merits of existing local zoning provisions.
13. The appeal is filed pursuant to the following provisions:

M.G.L. Chapter 40A Section 8.

An appeal to the permit granting authority as the zoning ordinance or by-law may provide, may be taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of this chapter, by the regional planning agency in whose area the city or town is situated, or by any person including an officer or board of the city or town, or of an abutting city or town aggrieved by an order or decision of the inspector of buildings, or other administrative official, in violation of any provision of this chapter or any ordinance or by-law adopted thereunder.

The relevant sections of the Nantucket Zoning By-law are:

Section 139-29.E(1)

(1) The Board of Appeals shall have the following powers:

[...]

(d) To hear and decide appeals from decisions of the Zoning Enforcement Officer.

Section 139-31.A(1) AN APPEAL TO THE BOARD OF APPEALS (OR TO THE ZONING ADMINISTRATOR IF AUTHORIZED TO HEAR SUCH APPEAL) MAY BE TAKEN:

By any person aggrieved by reason of his inability to obtain a permit or enforcement action from the Building Commissioner [see § 139-25B(1) above], the Zoning Enforcement Officer, or from any other administrative officer under the provisions of this chapter; or

Section 139-2.A - DEFINITIONS

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.

COMMERCIAL

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

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.

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.

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.

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 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.

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.

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.

14. Attorney Pickering-Cook stated that the appeal is based upon a contention that the nature of the commercial operations upon the subject premises meets the definition of Transient Residential Facility found in Section 139-2.A of the By-law and cited in Paragraph #13 above. As such, the Locus is subject to a requirement to have a Special Permit pursuant to Section 139-7.A (Use Table). A public hearing promotes the public process, holds owners accountable, and allows for the imposition of certain conditions where the commercial use of the property may be in conflict with the residential use of the surrounding zoning district.

15. Attorney Arthur Reade, who represents the Copley Group, clarified that a Transient Residential Facility has a classification in the Use Table and the Definition sections of the Zoning By-law which requires a Special Permit if located within the Residential Old Historic District AND within ¼ mile of the Commercial Downtown District. This location is well outside the required distance. Town Counsel Weisheit affirmed that the relevant issue is whether or not the Board finds the use to be an allowable private residential use.
16. After taking testimony from the above-cited legal representatives, their clients, and the Building Commissioner, a majority of members of the Board found the evidence insufficient to overturn the Building Commissioner. They determined that Commissioner Murphy appropriately applied the plain language of the By-law and that his decision to decline the request for zoning enforcement action was based upon an appropriate determination that the use of the Locus complies with allowable residential use. The Board felt it was important not to make policy and to focus on interpreting and applying the specific provision of the Nantucket Zoning By-law to this specific property. Questions of policy creation and enforcement should fall to the community in the context of Annual Town Meeting. Consequently, the Board members arrived at a consensus that the evidence presented was insufficient to prove that Commissioner Murphy's refusal to pursue zoning enforcement was improper.
17. There was discussion of what has become customary with rentals of private properties where frequent turnover occurs. The Appellant and interested parties reiterated that the anonymity and frequency of rentals occasionally lead to a lack of deference for the other residents of the neighborhood and as a result impinge upon their quiet enjoyment of their own properties. One Board member stated that the relative impacts linked to this particular scenario of an investor-owned property being rented with a high degree of intensity and frequent turnover differ significantly from that where a homeowner rents a property for additional income on an occasional basis. However, Nantucket has been and continues to be a popular destination for vacations. Rentals of private properties contribute to the health of the local economy in a myriad of ways.
18. The Board agreed that, as a regulatory body rather than a policy-making body, they are charged with determining whether the use in this particular instance could be construed as commercial according to the Zoning By-law as it currently exists. The Board arrived at a consensus that the evidence and testimony brought to bear were not sufficiently compelling to warrant overturning the decision of the Building Commissioner.
19. Furthermore, the Board concurred that Town Meeting is the appropriate forum to address and regulate STRs in order to establish more specific guidelines regarding what constitutes

an acceptable threshold for this type of use. Conversely, such proposed By-Laws should take into consideration unintended consequences for the island and its inhabitants.

20. A **MOTION** was made by Geoff Thayer and duly seconded by Jim Mondani to, for the reasons discussed during the Board's deliberations, deny the appeal to overturn the determination of the Building Commissioner. The vote was conducted by roll call vote with five (McCarthy, Botticelli, O'Mara, Thayer, and Mondani) in favor of the motion and zero (0) against the motion. The **Motion carried** and, therefore, the **APPEAL IS DENIED and the decision of the Building Commissioner is upheld.**

SIGNATURE PAGE TO FOLLOW

Assessor's Map 55.4.4, Parcel 133
14 New Mill Street
Residential Old Historic (ROH)
OWNER: 14 New Mill Street, LLC

Book 1559, Page 133
Plan Book 14, Page 17
Lot A-1

Dated: February 11, 2021



Susan McCarthy



Lisa Botticelli

Michael O'Mara



Geoff Thayer

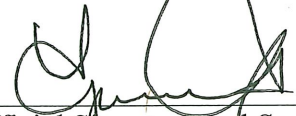


Jim Mondani

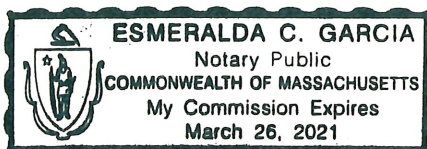
COMMONWEALTH OF MASSACHUSETTS

County of Nantucket, ss

On the 3 day of March, 2021, before me, the undersigned notary public, personally appeared Geoff Thayer, one of the above-named members of the Zoning Board of Appeals of Nantucket, Massachusetts, personally known to me to be the person whose name is signed on the preceding document, and acknowledged that they signed the foregoing instrument as their free act and deed and voluntarily for the purposes therein expressed.



Official Signature and Seal of Notary Public
My commission expires:



Assessor's Map 55.4.4, Parcel 133
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Jim Mondani

COMMONWEALTH OF MASSACHUSETTS

County of Nantucket, ss

On the _____ day of _____, 2021, before me, the undersigned notary public, personally appeared _____, one of the above-named members of the Zoning Board of Appeals of Nantucket, Massachusetts, personally known to me to be the person whose name is signed on the preceding document, and acknowledged that they signed the foregoing instrument as their free act and deed and voluntarily for the purposes therein expressed.

Official Signature and Seal of Notary Public
My commission expires: