

ZBA MEETING PACKET

07/13/23



MEETING POSTING

TOWN OF NANTUCKET

Pursuant to MGL Chapter 30A, § 18-25

All meeting **notices and agenda** must be filed and time stamped with the Town Clerk's Office and posted at least 48 hours prior to the meeting (excluding Saturdays, Sundays and Holidays)



Committee/Board/s	Zoning Board of Appeals
Day, Date, and Time	Thursday, July 13, 2023, at 1:00 PM
Location / Address	4 Fairgrounds Road, Nantucket, MA 02554 PSF COMMUNITY ROOM & REMOTE PARTICIPATION VIA ZOOM WEBINAR
Signature of Chair or Authorized Person	Leslie Woodson Snell, Deputy Director of Planning and Zoning Administrator

WARNING: IF THERE IS NOT A QUORUM OF MEMBERS OR IF THE MEETING POSTING IS NOT IN COMPLIANCE WITH THE OPEN MEETING LAW, NO DELIBERATIONS MAY TAKE PLACE-BUT THE MEMBERS MAY APPEAR AND ANNOUNCE A NEW SCHEDULE.

AGENDA

(Subject to Change)

The meeting will be recorded and archived at www.nantucket-ma.gov.

ZOOM WEBINAR REGISTRATION LINK:

https://us06web.zoom.us/webinar/register/WN_-ufMAyepSrajqLA0kM-bOQ

To view the LIVE broadcast of the meeting, see YouTube Link at

<https://youtu.be/EjQ3ldqGLQk>

BELOW ARE THE TOPICS THE CHAIR REASONABLY ANTICIPATES WILL BE DISCUSSED AT THE MEETING.

- I. CALL TO ORDER:**
- II. APPROVAL OF THE AGENDA:**
- III. APPROVAL OF THE MINUTES:**
May 18, 2023
June 08, 2023

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

37-21 Kristina & Nicholas Amendolare

8 Bank Street

Wilson

Requests to withdraw without prejudice

Applicants are seeking Special Permit relief pursuant to Nantucket Zoning Bylaw Sections 139-30 and 139-33A to make renovations, including an addition, to a single-family dwelling that is pre-existing non-conforming to the setbacks. Locus is situated at 8 Bank Street, shown on Assessor's Map 73 and Parcel 69. Evidence of owner's title is recorded in Book 1770, Page 216 on file at the Nantucket County Registry of Deeds. The site is zoned Sconset Old Historic (SOH).

09-22 Harris on Weweeder, LLC

50 Weweeder Avenue

Brescher

Continued to August 10, 2023

Applicant is seeking Variance relief pursuant to Nantucket Zoning Bylaw Section 139-32 from the intensity regulations in Section 139-16A to site a proposed pool cabana in the side yard setback as close as 2.7 feet from the side yard lot line in a zoning district that requires a minimum of a ten (10) foot side yard setback and to increase the allowable groundcover ratio to 7.9% in a zoning district with a maximum groundcover ratio of 7%. Locus is situated at 50 Weweeder Avenue, shown on Assessor's Map 79 as Parcel 15 and upon Land Court Plan 42927-A. Evidence of owner's title is registered on Certificate of Title No. 27684 with the Nantucket County District of the Land Court. The site is zoned Limited Use General 1 (LUG-1).

20-22 Steven L. Cohen & Christopher P. Choma, Trs. 29 Monomoy Rd Nominee Trust,

Cohen

Continued to August 10, 2023

Applicant is seeking Variance relief pursuant to Zoning Bylaw Section 139-32 for a waiver from the ground cover provision in Section 139-16 in order to construct an accessory structure of up to 780.25 SF. Locus is situated at 29 Monomoy Road, shown on Assessor's Map 54 as Parcel 209 and as Lots 10 and 11 on Land Court Plan 10937-C. Evidence of owner's title is registered on Certificate of Title No. 22883 at the Nantucket County District of the Land Court. The site is zoned Limited Use General 1 (LUG-1).

06-23 NOB ACK, LLC

2 Nobadeer Way

Cohen

Applicant is seeking Variance relief pursuant to Zoning Bylaw Section 139-32(A) allow for a *temporary* alteration definition of Dwelling Unit under Section 139-2 to allow for the construction of a structure *not yet used as a dwelling* to be constructed before the elimination of an existing dwelling that it will replace to the dwelling on a lot while a new dwelling is being built. The property is located at 2 Nobadeer Way, shown as Assessor's Map 68, Parcel 113, which is shown as lot 12 on Land Court Plan 16514-F. Evidence of owner's title is registered on Certificate of Title No. 26263 at the Nantucket Registry District of the Land Court.

PGS 07-23 Charles B. Johnson

4 Harbor Square

Alger

25-59

Applicant is appealing the Building Commissioner's March 31, 2023, determination pursuant to Zoning Bylaw Section 139-25 and 139-31. The locus is situated at 4 Harbor Square, shown as Assessor's Map 42.2.4, Parcel 1, which is shown as lot 11 on Land Court Plan 10222-E. Evidence of owner's title is registered on Certificate of Title No. 17791 at the Nantucket Registry District of the Land Court. The site is zoned Commercial Downtown (CDT).

PGS 10-23 Nantucket Cottage Hospital

16 Vesper Lane

Beaudette

61-84

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 three lots, none of which will meet the required frontage of 50 feet in the CN district. The 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).

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

Continued to August 10, 2023

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

VI. OTHER (VOTES MAY BE TAKEN)

VII. ADJOURNMENT (VOTE WILL BE TAKEN)

MINUTES

05/18/23



ZONING BOARD OF APPEALS

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

Commissioners: Susan McCarthy (Chair), Lisa Botticelli (Vice chair), Elisa Allen (Clerk), Michael J. O'Mara, John Brescher
Alternates: Mark Poor, Jim Mondani

~~ MINUTES ~~

Thursday, May 18, 2023

PLUS Conference Room, 2 Fairgrounds Road, Conference Room –1:00 p.m.

This meeting was held via remote participation using ZOOM.

Called to order at 1:02 pm and announcements made by Ms. McCarthy

Staff in attendance: William Saad, Land Use Specialist; Leslie Snell, Deputy Director of Planning; Paul Murphy, Building Commissioner, Nicky Sheriff, Admin Specialist

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

Absent: Poor

I. APPROVAL OF AGENDA

Agenda adopted by unanimous consent

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

Vote Carried unanimously

II. APPROVAL OF MINUTES

III. SURFSIDE CROSSING FINAL SITE PLAN/ENGINEERING REVIEW AND REVIEW OF CONDITIONS

Representing: George Pucci Town Counsel

John Chessia Town Engineer

Paul Haverty Surfside Crossing Attorney

Don Bracken Engineer for Surfside Crossing

1. 1 Surfside Crossing 40B

Discussion (0.09) **McCarthy**- Read Hybrid Script

McCarthy- The extension that we requested at the end of last week's meeting was granted to June.

Mondani- When are we going to get final plans on all this it can't be the 27th it can't be June 26th.

Bracken- We're trying to get that in at least by the end of the day tomorrow to address this round. There'll probably be some additional comments after this set so probably one more revision but hopefully that's just minor landscape.

Botticelli- I have a question about the 30,000 deposit, did that take place?

Snell- The work that they did though was not in connection specifically with this permit it was work that they could do with or without this permit by right subject to their NHESP permit.

McCarthy- Condition 123 says that submission shall be submitted to the Board describing how easements and covenants affect the use of the subject site location. Do you have those yet?

Pucci- I would direct that to the applicant, no I have not received anything, and I wouldn't be the one reviewing it would be Vicki Marsh from our office for Real Estate.

O'mara- I did not sit on this application but you start to discuss the sewer the last meeting and I wasn't clear whether if they get if they don't need the pump station are they going to try to enter the forced main?

Bracken- The proposed plan is to tie into the existing gravity line that's there, which is to be brought online and the easement that goes through the middle of the property those forced mains we could not connect to that never proposed it.

O'Mara- The water company is fine with that?

Bracken- I talked to David Gray yesterday he was going to try to make it to this meeting from what he told us he has no issues.

Mondani- Mr. O'Mara mentioned that he doesn't he wasn't sitting on this I just want to get an opinion of counsel whether any of the board members need to mullen in?

Pucci- They do not this isn't a public hearing and the public hearing on the underlying application closed so that's only relevant for those that were voting members of the public hearing. This is a separate matter now before the Board.

Botticelli- I think there is some merit for the consistency of the three people that are in the room that originally sat on this to be a part of this review.

Pucci- I would recommend you designate your five voting members on this particular issue that's before you and have anybody who wants to participate in the discussion, but the final vote should be amongst the five members.

McCarthy- Lisa had a question about when the thirty thousand dollars deposit will be issued. My understanding it'll be before the start of the clearing and grading they'll be required to pay that.

Snell- I believe that was struck in the HAC decision. It specifically says conditions 129 and 137 require the developer to pay the town's expenses in evaluating the plans required by the comprehensive permit decision and in monitoring and evaluating construction including an advance payment of thirty thousand dollars and we're engineering reviews and the town's construction oversight assessment of fees during the comprehensive permit review process that is before the comprehensive permit is issued or appropriate and regulated by m760 CMR 56.052 and 56.055 but the Board has provided no factual support or legal argument to justify assessing the cost of later monitoring which is typically covered by building permit fees therefore these conditions are struck.

McCarthy- Condition 139 says construction once commence shall progress through to compliance as continuous index expeditiously as possible in accordance with the instruction sequencing timetable approved no clear cutting of this site is permitted only so clearing as necessary to construct a section of the project infrastructure within the bouncer that was promoted to occur contemporary construction all-natural area all other natural areas contained. Are you not having any other phases because of the way that the program evolved?

Bracken- There are four phases which are in the hydrology report, but our phases purposes were only for erosion control in construction where we show in each phase the roads going in the drainage going in temporary drainage areas. We did not do a construction phase schedule that would be up to the applicant.

Haverty- I know that all the utilities are proposed to be installed at the beginning so I do think that the work for the clearing is necessary at the outset.

Feely- Phase one does include all the utilities, all the underground work, the roads, the sidewalks and the amenities.

McCarthy- Going back to what we discussed plans last time specifically to the recreational building requirements where in condition 15A and 15B talked about referencing the ground covering a thousand square feet and then the parking and eight spaces but both exhibit three and the kind of financial 10 spaces and what trumped, and this condition here added by HAC at the end. Exhibit three is the one that we base offered because it's same here in their condition they added the development we shall be constructed substantially as shown on plans.

Bracken- So the foundational dimensions didn't change since that plan was submitted when they did the final construction plan for it, they decided to use a penalized insulation system which overhangs like four or five inches from the foundation wall.

McCarthy- John do you want to go over the storm water regulations with us?

Chessia- So standard one there's no wetlands near the site, there's no outlet pipes proposed so it would be no outlets and then the other comment is its untreated storm water so what there's no discharge everything is infiltrated, and everything does get treated through various systems. I have some comments on those as we move along but basically subject to the other requirements that we'll get to, standard one would be met standard two typically you do 100-year storm calc which wasn't done which is actually fairly simple for this software program they're using you just add a rainfall in the intent of the hundred year storm is to show that it doesn't overflow something and floods somewhere, an abutter in particular. One of the bigger things is there really wasn't any full design for the roof drainage system, the areas shown seem to include not just the roof but some surrounding areas. There was an increase in impervious areas that needed to be caught up with in the calculations that were based on the Exhibit 3 plans. It's a dense site so it's a little more complicated but that's a concern there relative to standard two and standard three. I suspect on Nantucket that the soils are pretty much consistent through the site I can't guarantee that because there aren't enough tests but one of the requirements is you have a certain number of tests under each system that hasn't been done yet. If this were in a different part of the state, I would be much more concerned that they'd find something that wasn't as suitable, but it is a requirement and how that gets addressed they may want to do that. Sometimes they want to do it ahead of time, it should certainly be done before any of the buildings go up. The prevention and operation maintenance plan, my comments on that again we talk about the street sweeping. There wasn't anything listed in the operations maintenance plan about street sweeping so how do you get credit for removal if you don't even include it as part of the operations?

Mondani- Can you clarify the street sweeping credit and how does that work and what is your recommendation with regards to that.

Chessia- I do recommend that the streets be swept on a somewhat regular basis at least in the spring after you sand the roads but to get credit in the handbook, they have specific listings it depends on the type of sweeper, how frequently you sweep and each one has a different credit to it. I don't have them memorized as to how much credit you get for the different things but this your typical sweeper that's got the brooms that rotate and pick it up and then there's also vacuum sweepers which are more effective and get to a higher rate. I generally recommend to towns that they don't give credit for the street sweeping because it's not always done.

Botticelli- Has the storm water prevention plan been submitted?

Chessia- The storm water pollution prevention plan is a fairly detailed report and typically I review them all the time for towns and typically what I do is there's an EPA template and that's generally what's used I believe it was used on this one although I didn't really look at it with much detail and I just go through the EPA template requirements.

Bracken- I think one of John's comments that we completely disagree on is his interpretation of the setback between foundations of living spaces to the drywalls we're proposing. John references their requirement it's still on a management act that says we change then you must be 20 feet from any foundation or livable space but there's another section of the stormwater management act that says if you have a dry well you only need to be 10 feet and we have drywalls we don't have leaching trenches in our opinion. The drywall is a

hollow chamber with stone around it trenches on hollow chambers but beyond that we feel most of the systems are at least 15 feet away anyway some of the systems that are below the lowest systems are below the foundation anyway so those shouldn't apply but this is just the way we've done it on the inside of most projects we buy. I don't think there are many instances where we can get drywalls 20 feet from a foundation with these soil conditions and with waterproofing methods. We think the 10 feet is adequate but we're going to adjust them on the plans that we're submitting tomorrow to get them as far away as possible but I think that would be a kind of setting precedent in Nantucket when it's not realistic and it's not been done here and of all the ones that we've done over the years we've never had any issues with the drywalls that are that close to the foundation. We can beef up the operation of maintenance program to improve more language with that soil test pitch. As far as the emergency shut off after the over chamber what John says correct, sometimes we do provide an emergency shutoff but the problem with that is that's manually and we feel given the use and potential for spills mainly it would be vehicle gas tanks and that sort of thing not having oil delivery or anything like that coming to the site that the volume inside the oil grid chambers is already adequate.

Mondani- John please elaborate on this difference of opinion on the drywall.

Chessia- If you look at the DEP handbook detail of a dry well it's a small thing for a typical roof for a house it's not actually even a chamber and it's designed to handle what would be called the required recharge rate for compliance which is recharge standard three for recharge is based on the soil conditions which I would say in this site six tenths of an inch is the volume required but in the plans of to recharge the hundred year storm in these systems it's a vastly different design now they're large chamber systems to take a lot of water in one spot. It's a different thing in my opinion now, I have less familiarity with Nantucket obviously than I'm sure all of you do you and you know what the soils are like if a system is below the basement it's unlikely that it's going to flood the basement but if it's above the basement and can go sideways especially if they get plugged up it'll be more of an issue I did not look all the designs weren't really done so you couldn't even look at them on a building by building basis but I think that it's two different things and I think if you look at the handbook you'd see that. I think it's important to have that to protect the future residents of the condominium. I would say you are more familiar with the conditions on Nantucket and if that's the way everything's done and the Board's fine with it that's fine but I'm going to take the conservative approach of being further away to be safe.

Bracken- I think we can demonstrate that it's going to be adequate and it's not going to be a threat.

Botticelli- Can we ask John his opinion on the shutoffs?

Chessia- The shutoffs are listed as there's a requirement in the DEP handbook so that's why I take the handbook and I look at the plans and whether it has it or it doesn't have it. So, it's a pass or fail and if it doesn't have it that's what is required by DEP in a critical area now. If you're going to allow that to be waived it should be with insight from the water company because it's their system that gets the impacts.

Bracken- We kind of disagree again that it's required because in this case when we have that's that is a requirement but it's a general requirement I believe, and we have the oil gas separator already so we've we felt that that was adequate, and it always has served to be adequate on all the other projects we've ever done on the island.

Mondani- John you mentioned the inspection requirements do you have examples of what other municipalities require this?

Chessia- I mean some towns have it, there's a few different ways they do it, one they can ask to get copies of inspection reports on an annual basis but then somebody at the town must be equipped to review it and look at it and see that it was done. I mean it could be a database or something. All towns struggle with it as more and more places get built, it's almost like you'd have a whole person just looking at these things at some point.

Snell- The planning board deals with this type of issue all the time in subdivisions and other projects and they just have the operation maintenance plan submitted it's in the file there's usually a condition that the applicant must operate and follow it and then just refer back to it if there's an issue that needs to be addressed. It's not something that we're constantly monitoring or having them submit reports and generally we find that there's not an issue.

Allen- So there's nothing pending everything has been dealt with and agreed to and there is no wrongdoing on the developers' part at this point? and I'm just connecting back to item 75 so I just know that it doesn't have anything to do with the ZBA what has been done so far on the lot and I'm also curious, it has been found that what has been done so far clearing-wise broke no rules is that true? How are we going to police the overall project and how are we going to police every single detail? I want to go on record right now and know if this developer is already breaking the rules?

McCarthy- The NHESP permit allowed them to do the tree clearing.

Snell- The work that was done on the site could've been done, by right no matter what due to the NHESP permit. They did not need a permit from the Zoning Board.

Haverty- With regards to the natural heritage matters these issues have been handled by Chip Nylon who is the Environmental attorney. I do want to point out that all appeals were resolved regarding the environmental permitting at the time that the tree cutting took place. A subsequent appeal was filed afterwards that was not a timely appeal and it's currently the subject of a motion to dismiss.

Pucci- I can quickly comment on that as Leslie had noted there was no zoning violation for what they did when they cut the trees down. The developer had the approval, and they had the permits in hand.

McCarthy- John what do you think is realistic for us to try to plan to meet again?

Chessia- You could certainly look at the landscape plans, I'm not a landscape person so you could certainly look at those.

Mondani- I'd like to make a motion to extend the 90-day period for an extension after we receive final plans. The developer has sent us conceptual plans in March, and we need full-time to review. I don't see how we can do this when they keep sending plans and they don't have their ducks in a row and it's unfair to jam this on us. on this I mean they could have started with a picture of the project and then deliver final plans the

McCarthy- I just want to remind everyone that we did just ask for an extension last week and they did grant it.

Mondani- Now we've been delayed another two weeks and I'm sorry if I'm upsetting you madam chair.

McCarthy- I'm not upset I just think you are very aggressive and really stepping outside of your role on the Board.

Mondani- I don't agree, but there's a motion on the table and it has been seconded. I didn't attend a dinner with the developer, you did and that's why you're upset. I think you've changed your view.

Botticelli- I don't think it's an unreasonable request to get more time, essentially once John reviews this and it comes back to us, we'll have 27 days.

McCarthy- I am not against extending the time I just think it's a little premature to ask for an extension when we just got an extension.

Mondani- You have a role as a chair but not to constantly fight with members.

O'Mara- I'm not sure about that but I have a question for Leslie, in terms of the deadlines, if we ask the applicant for another extension and the applicant turns us down and HAC has already given us a timeline. Do we go back to HAC and ask them to extend it?

Snell- This may be a better question for George Pucci, but I believe that HAC directed you to review the plans within 90 days, the applicant has granted an extension that you mutually agreed upon. Quite frankly I don't understand why you all think these aren't final, they're final in the sense of yes, they may need to be tweaked but most of the information is there. This is a technical review you're supposed to be looking at this amended decision and your comprehensive permit and see if the plans estimated meet the requirements. I'd like to hear from the Board what your intentions are or what you're planning to get out of a further review.

Allen- Just because we're given the extension doesn't mean we can't give them permission to go ahead earlier, right?

McCarthy- The 90 days is like the book ends, we have up to 90 days but if we think that we need more based on all the information we can request more time.

Bracken- I don't think there's any comments that Mr. Chessia has presented that we can't address and have the plans to them tomorrow. It's my impression I've been involved in 40B's in other places as well and this is part of that 90-day period. You review it and we discuss it, and we make changes to try to address those comments in the plans.

Mondani- Rescinded his previous motion.

Botticelli- I'm going to make a new motion to request the applicants to give us an extension until July 28th to review what are going to be the final plans that we're going to be receiving tomorrow.

Pucci- I'm going to send Paul Haverty an email right now requesting the extension that you just voted July 28th and then he can respond in writing.

Haverty- My clients are not inclined to grant another extension at this point in time. First of all, it's premature, and second of all the 90-day period that has been bandied about is not in the Housing Appeals Committee decision, it actually comes from your original decision, and it has been superseded by the Housing Appeals Committee decision. I think it'd be helpful for me to read the relevant portion of the HAC decision. Any references to the submission of materials to the Board, the Building Commissioner or other Municipal officials or offices for their review or approval shall mean submission to the appropriate Municipal official with relevant expertise to determine whether the submission is consistent with the final comprehensive permit, such determination not to be unreasonably withheld. Such officials may consult with other officials or offices with relevant expertise as they deem necessary or appropriate in addition such review shall be made in a reasonably expeditious manner consistent with the timing for review of comparable submissions for unsubsidized projects. Generally, when I represent Boards doing 40B applications the time period for review of final plans is 45 days the 90-day period is already double that and we've already agreed to an extension it's well beyond what would consider to be a reasonable time frame. This Board isn't sitting to approve or disapprove the final plans, pursuant to the HAC decision that determination comes from town staff. We have submitted the final plans to the Board and we're participating in this process in good faith because we believe that the Board should be providing feedback to town staff in making its determination and we're happy to continue to do that but there's no need for additional extensions at this point.

Pucci- What he said is correct, the HAC superseded the board's 90-day order. I would recommend strongly from a legal perspective not to put yourself in that position that you're litigating over details like this in terms of a plan. Try to get a substantive review completed to the fullest extent possible and then if you have legitimate issues of deficiencies in those plans then you note them and presumably the Building Commissioner will agree with your findings as to compliance on these final plans.

Mondani- It sounds like we really don't have much authority here, is that right? correct

Pucci- Well you have what authority is provided under your conditions of approval as amended by HAC and HAC did confirm that you have a sort of a right of review of conformance with the final plans.

Botticelli- Don, would it be possible to note in the report you submit which drawings we are going to find all the information?

Bracken- Yes.

McCarthy- I am trying to work with this Board and work with the developer to make for lack of a better analogy lemonade out of lemons and do the best for the island that we can do with the decision that came down that has to be followed. We can't make new conditions; we can't change those things. And for you to say my opinion has changed about this, it hasn't, I'm just dealing with the reality of the decision that was given to us and the set of circumstances that we must deal with this is not how I would have liked to have seen the project come down, but this is where we are.

Mondani- I just believe that this this was on that it was unfairly pulled out from under this Board, and we made the decision on this, and we should appeal.

IV. OTHER BUSINESS

Discuss meeting with Select Board

Discussion (2:20:58 **McCarthy**- Discussed possible dates to meet with the Select Board.

Mondani- Would like to make requesting special counsel a discussion item on the agenda for the meeting with the Select Board.

McCarthy- The associate members which is how they're called in general law and I think in the bylaw as well don't make motions or vote unless they are brought up to do so in the event of an absence, a vacancy or whatever and I just want to make sure we do this right because there's been a lot of things swirling around this process and I don't want to open us up to a higher level of scrutiny.

Pucci- Our opinion is that an associate member of a Board unless that associate member has been specifically designated to sit on a particular matter does not have the right to make motions and then to vote on motions. If your customary practice is contrary to that you typically allow motions from associate members and you go ahead and vote on them then I see no reason to reset the clock now, although it certainly goes against what our opinion is on that issue. I prefer and the preferred practice for something high profile like this 40b application that affects the citizens of your community, that you designate whoever's sitting at the beginning and you don't leave it a mystery. Having said that, that's our formal opinion, an associate member does not have the right to make a motion to the Board.

Mondani- Rescinded his motion.

Allen- I'll make the new motion that we discuss and explore during the meeting on the 23rd with the Select Board the potential of getting our own counsel.

Motion (made by: Allen) (seconded)

Roll-call vote Carried 3-2//McCarthy (Nay), O'Mara (Nay), Brescher (Aye), Botticelli (Aye), and Allen(Aye)

VII ADJOURNMENT

Motion to Adjourn (made by: Brescher) (seconded)

Roll-call vote Carried 5-0//McCarthy, O'Mara, Brescher, Botticelli, and Allen-aye

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

I. None

Submitted by: Nicky Sheriff

MINUTES

06/08/23



ZONING BOARD OF APPEALS

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

Commissioners: Susan McCarthy (Chair), Lisa Botticelli (Vice chair), Elisa Allen (Clerk), Michael J. O'Mara, John Brescher
Alternates: Mark Poor, Jim Mondani

~~ MINUTES ~~

Thursday, June 08, 2023

Public Safety Facility, 4 Fairgrounds Road, Community Room –1:00 p.m.

This meeting was held via remote participation using ZOOM and YouTube.

Called to order at 1:08 pm and announcements made by Ms. McCarthy

Staff in attendance: William Saad, Land Use Specialist; Paul Murphy, Building Commissioner, Janelle Austin, Town Council, KP LAW

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

Absent: Botticelli

Agenda adopted by unanimous consent

Motion **Motion to Approve.** (made by: O'mara) (seconded)

Vote Carried unanimously

I. APPROVAL OF MINUTES

1. May 11, 2023

McCarthy – No substantive changes really just bolding and capitalization changes.

Motion Motion to Approve with minor edits. (made by: Allen) (seconded)

Vote Carried unanimously

II. OPEN MEETING LAW COMPLAINT FROM ATTORNEY PAUL HAVERTY, DATED MAY 18, 2023

1. Open Meeting Law complaint from Paul Haverly, dated May 18, 2023

Discussion (6:57) **Austin-** There has been an open meeting law complaint filed against the Board by attorney Paul Haverly dated May 18, 2023, it pertains to the Board of Appeals meeting on May 11th at the meeting today the Board will acknowledge the open meeting law complaint against it discuss the allegations generally Town Council has prepared a draft response subject to the Board's review this afternoon relative to the allegations set forth in the complaint which I will discuss in one minute essentially the board will review those allegations and um discuss it determine if there are any comments to the draft proposed and authorized Town Council to file the response with the complainant and the Attorney General's division of open government subject to any comments or changes the board may have in essence the complaint alleges that the motion to amend leading agenda for the May 11th meeting was not in compliance with the provisions of the open meeting law as it was not unanticipated nor was it an emergency. Town Council has prepared a draft response subject to the Board's review outlining the Board's position on that and certainly available to answer any questions the Board may have.

McCarthy- I read over Town council's opinion and I'm sure we've all read the complaint filed by Attorney Haverly. I don't have any changes to the response. Does anyone have any questions for Town Council about open meeting violation that was filed?

Mondani- Why didn't you think it constituted an emergency?

Austin- There was discussion based on my review of the meeting that it was something that was anticipated by the Board in advance of the meeting and based on the totality of the circumstances and the factual circumstances surrounding it and the Attorney General's determinations and what generally would constitute an emergency in my opinion based on my review of the open meeting law determinations on point it is unlikely that it would constitute an emergency for purposes of the open meeting law.

Mondani- I disagree with that, I think there was a reason for it and the circumstances are important. I was not able to get this item on the agenda. We had a hearing at two o'clock that afternoon and we were not represented by Council and what's ironic about this is your Law Firm is writing this when it has to do with us obtaining special counsel. So, you're conflicted on this and that's been the basis of what I've been saying all along. You're throwing this Board under the bus by saying we violated it and I know the AG's office has ruled on we could have ratified this at another meeting but again the chair has refused to allow me to add this as an agenda item so that's that. My other question relates to why don't you just have us ratify the vote why don't we just go and open it for discussion and ratify it and my concern is that you probably have a conflict in that and probably a concern because we're going to reopen this to appoint special counsel and I guess the bottom line is I don't think it's an acceptable response and I think you should I think the board should consider that and consider some other options and review the draft which unfortunately we don't have at this meeting because the draft of what it wasn't included in the packet.

McCarthy- What are the consequences of acknowledging that there was an open meeting violation for this Board?

Austin- Just to be clear, the response that's been provided to the to the Board is consistent with my experience in interpreting the Open Meeting Law and that's what I'm here to discuss this afternoon. In my opinion the consequences are as follows generally if a complainant is unhappy with the Board's response they would seek further review with the attorney general's division of open government to the extent the division of open government may deem it to be a violation of the Open Meeting Law there are often remediation requirements, training requirements or alternatively if there's an intentional violation or a series of intentional violations there is the risk of penalties or fines in extraordinary circumstances.

Mondani- Do you believe that your firm has a conflict in this? This isn't your typical open meeting violation. It's not like we discussed this behind the scenes, and I think this is something that we can readily rectify by putting it in on the agenda and discussing it and re-voting. Maybe it doesn't require a vote, but I feel like Town Council is not adequately representing us.

Austin- Just to be clear, it's certainly our position that there is no conflict at issue here and second, I want to be cognizant of what's on the agenda this afternoon relative to just discussion of the Open Meeting Law complaint so I want to be clear about that. With respect to the second question in terms of the potential remedy in my opinion there is an option to have a meeting subsequently if it's posted in accordance with the open meeting law if the Chair so declares to put it on the meeting agenda as a topic with 48 Hours advanced notice to resolve it as well. In response to this complaint as you all know there's a 14-day requirement to provide a response to the complainant as well as the division of open government that is what we're here for this afternoon but that is an available remedy to attempt to ratify any open meeting or value under the Attorney General's determinations.

O'Mara- Didn't we vote whether or not to seek out our own Council?

McCarthy- We voted, and that vote did not carry.

O'Mara- So I'm not sure if that's ratifying the situation or not but I would think that that's got to fall into this puzzle somewhere that we did vote on it.

McCarthy- I think that is mentioned in the complaint that it the potential open meeting violation, not that it's mitigated but that the fact that the result the topic of discussion, the topic of the open meeting or this is only I think one aspect of the complaint that was filed but that it wasn't voted forward maybe tempers the violation.

O'Mara- If the member thought that it was an emergency in his mind and maybe still feels that way, maybe he doesn't. Is that clear-cut evidence that the open meeting law was broken? foreign

Austin- So generally in my experience the Attorney General's office would look at the totality of the circumstances to determine whether it be based on the law and facts at issue there this would constitute an emergency as you might expect emergencies under the open meeting law generally pertain to public health and safety emergencies large storms sewer issues certainly Public Health emergencies. In the past couple of years those are generally the categories that fall under emergencies for purposes of the Open Meeting Law even if it is an emergency with the Attorney General's office advises is that the best practice so to speak is to amend the agenda as soon as possible to give members of the public as much as advance notice as necessary to revise the agenda as soon as you can even if there isn't an emergency and then to ratify it at a future meeting if the Chair decides to put it on the agenda.

O'Mara- What are we going to be voting on today regarding this?

Austin- Essentially, all the Board is being asked to vote on is a response to attorney Haverly's Open Meeting Law complaint that's before you. Town Council has prepared a draft for the members review this afternoon a copy of that has been distributed so essentially, it's just a motion to authorize the draft subject to any comments or other considerations the Board may have into authorized Town Council to file that with the complainant as well as the division of open government in response to the May 18th Open Meeting Law complaint.

Mondani- For the record, I'm not sure Council knows about this, but I acknowledge that if it was a violation that we could have ratified it at another meeting. I requested this agenda item, and it was rejected so those circumstances need to be taken into account and our council's representation of us.

McCarthy- When we were discussing this and when the request was made to the motion into an emergency aspect of it. It was not brought to my attention until later and it's in the minutes on page eight, but it was not brought to my attention or the Board's attention in general that the hearing that was on that day at two o'clock was something about the Land Council and Tipping Point to introduce additional evidence and we the Town wasn't a participant in that hearing so I feel like if we did have any emergency aspect of if that had been made known at the beginning it we might have gone down a different path. I support the recommendation from Town Council. I don't have any changes to it, and I suggest that we acknowledge this response and authorized Town Council to file it with the attorney general in the division of open government to meet the 14-day response unless anyone has any suggested changes or other questions or comments.

III. OLD BUSINESS

1. 09-22 Harris on Weweeder, LLC

50 Weweeder Avenue

Brescher

CONTINUED to July 13, 2023

Voting McCarthy, O'Mara, Allen, Poor
Discussion Not opened at this time.
Motion **Motion to continue**
Vote Carried unanimously

2. 20-22 Steve L. Cohen & Christopher P. Choma, Trs. 29 Monomoy Rd Nominee Trust, 29 Monomoy Road Cohen

CONTINUED to July 13, 2023

Voting	McCarthy, Brescher, Allen, Mondani
Discussion	Not opened at this time.
Motion	Motion to continue
Vote	Carried unanimously

3.	37-21	Kristina & Nicholas Amendolare	8 Bank Street	Williams
		CONTINUED to July 13, 2023		
Voting		McCarthy, Brescher, Allen, Mondani		
Motion		Motion to Continue to July 13, 2023. (made by: O'Mara) (seconded by: McCarthy)		
Vote		Carried unanimously		

IV. NEW BUSINESS

1. 10-22 Paul P. Moran & Jean M. Moran	4 Washington Avenue	Santos
CONTINUED to July 13, 2023		
Voting	McCarthy, O'Mara, Allen, Mondani	
Discussion	Not opened at this time.	
Motion	Motion to continue. (made by:Brescher) (seconded by: Allen)	
Vote	Carried unanimously	

2.17-22	Nantucket Cottage Hospital	16 Vesper Lane	Erickson
	WITHDRAW WITHOUT PREJUDICE		
Voting	McCarthy, O'Mara, Allen, Bresche, Poor		
Discussion	Not opened at this time.		
Motion	Motion to withdraw without prejudice. (made by: Allen) (seconded by: Brescher)		
Vote	Carried unanimously		

3. 06-23 NOB ACK, LLC 2 Nobadeer Way Cohen

Discussion (38:03) **Cohen-** My client would like to build a new structure on the property. The problem is you can't get a building permit for a new house if you have the house on the property because it would exceed the number of allowable houses on the property. My client is asking for a Variance from the definition of dwelling, which a dwelling under the bylaw is defined as a structure that is either occupied for or intended to be occupied for dwelling purposes and then it has other words that say what that means but essentially what I'm asking for is for the Board to give a temporary waiver of the phrase intended to be so that this structure would only be counted as a dwelling but it is occupied not when it is intended to be occupied because the intention starts with as soon as you dig the foundation and so that temporary variance would only be through the construction of the structure. The family would move out of the very poor condition building into the brand-new structure and then the waiver would be extinguished by the operation of the permit they're requesting, and the existing structure would be demolished so the property would always be in compliance with the number of occupied dwellings on the land at the time and we would only have that allowance. I know that the staff report recommended against this because in general you're not supposed to give use variances I don't think this is properly characterized as a use variance I understand why staff made that point and I think they were actually diligent about it and in fact I think the way I originally applied for it they were correct, and I had to change my application based on some advice and dealing with the staff to give a different reason for it. I had originally asked for an additional dwelling which I think would have been a use variance that you couldn't grant. I would note that the Board has granted similar relief to what I'm asking for in different purposes and what I mean by that is right now you can get a variance, a special permit relief from the definition of tent to allow it to be on the property for more than what is otherwise allowed under the definition in the bylaw.

Allen- Can we hear from Paul the head of the Building Department as to his opinion on this.

Murphy- I didn't weigh in on this one way or another, I don't have a position on the matter, whatever is the pleasure of the Board.

Allen- Have you seen this in the past?

Murphy- Not on Nantucket but in other communities.

Allen- So you haven't seen yet where one house is going up while the other one is occupied and then that gets demolished?

Murphy- I have not seen it on Nantucket but I've only been here four and a half years, so I don't have a long history with it, but it is done in other communities.

Cohen- It predates my personal experience, but I know Bernie Bartlett who used to be the Building Commissioner used to allow for these types of permits with conditions on them for people to move houses and otherwise engage in the construction or moving of structures to properties where they were going to build something and then demolish. The problem he ran into is he got burned by people who would not finish it's since been the policy of the of the Building Department to stop doing. My client would be willing to put money into escrow or otherwise put conditions in place.

O'mara- Is there any provision to put a fence around the construction?

Cohen- Whatever conditions the Board felt reasonable my client would be willing to accommodate.

McCarthy- Was there any other avenue other than a temporary alteration of the definition of dwelling unit, I don't love that language.

Cohen- I had originally applied for permission to do a fourth dwelling instead. Staff contacted me and thought that might be a bridge too far and I didn't disagree with their reading of it and I think that what I've suggested in the alternative is at least consistent with the practice that the Board has used a couple of times in the recent past in terms of how to work within its authority.

Allen- As long as we could get this in writing assurance that as soon as the family moved into the new structure the other structure had to be demolished.

Cohen- I do have a thought on that for your consideration which is that you could put a condition in it that through staff or through the Building Commissioner that we would provide evidence of a permit for demolition, evidence of a contract for that demolition and evidence of availability advocate for that to happen.

McCarthy- Can you talk to me a little bit about the next steps with the Planning Board for the additional bedrooms?

Cohen- There's two permits that are required from the Planning Board, one of them is for a tertiary dwelling whether it's a tertiary permit or a tertiary special permit you need one either way so that's something that we have applied for it's on the agenda for Monday and then the second thing that we've applied for is to exceed the bedroom count this has allowed 7.9 bedrooms and we've asked for a waiver to go to eight. There's an addition that's been proposed that comes forward of the building so it's away from the setback encouragement, we had originally considered doing a sideways edition which would have required relief from the Board to do an expansion of a pre-existing non-conforming use within the set back and then we decided to not continue with that request so any addition to the building that's being kept would be outside of this set back.

Manning- Amy Manning, 7 Nobadeer Way. I was just looking at the abutters who got information and I'm at number seven and didn't get any information on this. All the houses are old ranch style houses on the cul-de-sac, and it was made R10 Limited at town meeting prior. There's at least six or seven people in that house and there's at least 10 cars that park two in the driveway, three on the lawn, one car was just removed that was in an accident and has been there since the accident. There are people that park on the road, so you want to build another house and put it in and have how many employees that work for whomever building a house adding to our road for parking, taking away parking from what the cottage in the back is. There's already a nighttime thing where there is not supposed to be parking overnight and technically that resource officer is going to start ticketing yet again, it's too much. We have called The Board of Health because there is illegal cooking being sold over at Statue Park. I don't want people to lose their housing, housing is horrible here, but you cannot put a third dwelling that's already there and say you're not going to take away you're adding a duplex. Where are they going to park?

Cohen- I appreciate what Amy's saying, some of it is not necessarily relevant to here and some of it actually is concerning to me as the attorney for the owner and I'd like to follow up after to make sure that if there are any health and safety issues or any zoning violations or just any neighbor disturbances my client would take action to try and mitigate any of those things. If you were to turn us down all of this would happen anyway except we would demolish the structure first and displace the family and you'd end up with the same exact thing um so you know I appreciate what Amy's saying but really the only question in front of you is whether you want us to demolish that building and displace the family or if you're willing to put conditions in place to allow it to happen.

Brescher- I don't love this as a variance, I think it's a stretch. I appreciate that you can absolutely do this by right and I understand why you've come before us. I would love it if there was a way that you could do it administratively without a variance because I feel like if we go down the variance route, we're going to wind up putting a lot of very difficult conditions on this.

Cohen- To the extent if the Board were to go in that direction frankly it's okay for my client I've told them to expect you know conditions that would be both protective of the of the families on the property and protective of the neighbors it might actually be better for the neighbors if the Board put conditions in place so for example a requirement so that there be no on-street parking by this construction company is not something that you could do not something that would exist outside of variance but it's something you could put on your permit like there are conditions that you could impose that would be beneficial to the neighbors that don't otherwise exist.

Allen- It sounds like there's a parking issue even without the construction vehicles.

Cohen- Our intent is to alter the parking right now there's two different driveways and one of them basically has all the parking in the yard. We are going to change that so that there's only going to be one curb cut instead of two and two different modern approved compliant parking areas.

Allen- Can we discuss why the staff recommends we don't approve this?

Cohen- When I first applied for this, I applied for permission to do a third and fourth dwelling and Billy reached out to me and suggested that might be a use variance which is not generally allowed under your authority and I agreed with him and I tried to think well how can we do this and I remember that we had done this temporary alteration to the tent Bylaw a couple of times and so I revised my application and I think that the staff's position on this is not for against the merits of the application it's whether or not they consider this to be a use variance and I think they're coming down on the side that it might be.

Saad- Under the definition of Variance with respect to land or structures and it's not specific to any owner. That would be with respect to the land or structures regardless of who owned it, would not be able to do this. Given the circumstances it's very particular to this case it's not, regardless of who would own that land.

Poor- It would appear that after the primary dwelling closest to the street is razed and the proposed secondary tertiary building whatever you want to call it goes in the addition that was proposed on this plan for the one story one bedroom dwelling seems not to calculate into a 20 percent difference between the primary dwelling and the secondary dwelling.

Cohen- That's correct there are two answers to that one of them is that we would if we were going to get approval to do that addition we could potentially require permission from the Planning Board to get the waive the 20 differential rule which we have not yet applied for and I think actually the more correct, more complicated answer is that that rule applies to primary and secondary dwellings but the structure that would be measured against is both a secondary dwelling and with an attached tertiary so if you delete the attached tertiary then it would apply. That is an issue that I would have to clean up at the Planning Board and if the Planning Board requires that waiver then we would either get that waiver or not be able to do the addition.

Cohen- Because it's a variance, my hope is that you'll grant the motion, but my inclination would be to withdraw instead of making a denial if you're heading in that direction.

Brescher- Suggested the matter continue and applicant possibly dealing with the relief request administratively.

CONTINUED to July 13, 2023

Voting McCarthy, O'Mara, Allen, Brescher, Poor

Discussion

Motion **Motion to continue to July 13, 2023.** (made by: O'Mara) (seconded by: Brescher)

Vote Carried unanimously

4.07-23 Charles B. Johnson

4 Harbor Square

Alger

Discussion (1:25:11) **Alger-** I represent the old North Wharf Cooperative with me is Danielle de Benedictus she represents Charles Johnson who's one of the Cooperative shareholders and the holder of the long-term lease on the dwelling that's about 12 inches away from this proposed project the purpose of this action is twofold we're appealing the decision of the Building Commissioner not to revoke the building permit issued for this project in the absence of an MCD special permit and we're asking for the revocation of the permit itself. An MCD is defined as a single commercial structure or use or a group of commercial structures or uses which is proposed to be constructed on a single water tract of land or on a contiguous tract of land and held in common ownership or control, meeting in the aggregate any one or more of the following criteria. That's really what's at issue here, they should be required to go to the Planning Board like everybody else and get an MCD Special Permit.

Poor- Expressed he may have a conflict.

Mondani- Expressed he may have a conflict as NIR is the landlord for his business at the Boat Basin.

De Benedictus- I think under the state Conflict of Interest Law which as a former Assistant Attorney General I'm very familiar with there's definitely conflict here.

McCarthy- I think we should continue if we only have four members at this point.

O'mara- I think we have to continue; the question is the testimony that we've already heard can we get somebody to mullen in on that?

McCarthy- We should have a new full board member by July 13th so that'll give us five, assuming he doesn't have a conflict.

Continued to July 13, 2023

Voting McCarthy, O'Mara, Allen, Brescher

Discussion

Motion **Motion to continue to July 13, 2023.** (made by: Brescher) (seconded by: O'mara)

Vote Carried unanimously

5.08-23 39 Monomoy Road LLC

39 Monomoy Road

Reade

Discussion (1:51:02) **Reade-** This is an application to construct alterations to a pre-existing non-conforming single-family dwelling the structure is on a lot that was created pursuant to an 811 subdivision, so it has the status in all respects of being a legally existing non-conforming structure my client is now proposing to construct certain additions to the structure which will involve eliminating an existing non-conformity in the side yard setback will increase the front yard setback from the present 9.6 feet to 9.9 feet and we'll keep the existing ground cover exactly at the level that it's at right now.

O'Mara- I just realized that my office was involved in this sale okay and I don't know the buyer but I just want to bring that to your attention. I

McCarthy- Do you have any reservations about Michael participating in this?

Reade- No, I don't I think any involvement he had was with the prior owner and not with the present owner.

McCarthy- Based on the application and the increasing conformance with the front yard setback I don't at this time have any objections or issues.

Reade- I meant to mention not that it changes anything, but we'll be putting something about it in the decision. The side is constrained by wetlands and that's the reason why we're keeping the house in approximately the present condition regardless of the work that's being done.

Voting McCarthy, O'Mara, Allen, Brescher, Poor

Discussion

Motion **Motion to Approve relief as requested.** (made by: Brescher) (seconded by: Poor)

6.09-23 Edward V. Lahey, Jr Trustee of Boathouse Realty Trust 52 Warrens Landing

Reade

Discussion (1:59:09) **Reade-** This is an application involving moving an existing very small cottage, one bedroom structure that has existed for many years on this property. My client Ed Leahy working with his Architects, his surveyor and Wetland Specialists they've determined that it would be appropriate to move the house away from where it is currently situated which is right on the harbor in a position where although the rate of erosion there is relatively slow it is immediately adjacent to the beach and as a matter of dealing with coastal resiliency issues as everyone is supposed to be doing these days. They want to move the structure to a point on the eastern part of the lot farther away from Madaket Harbor. The wetland constraints are not only the location of the harbor but also a wetland to the east and southeast of the property and in so doing they've obtained ConCom and HDC approval for the structure to be moved to a location which would wind up having a 24-foot setback from Warren's Landing Road and the lesser setback from an unnamed way running along the easterly side of the property. The structure is now conforming as the front yard setback because even though it's closer to Warren's Landing Road than would be permitted the unconstructed way on the easterly side of the property technically provides front yard setback and under the bylaw that's allowed to be counted; we're basically creating a new non-conformity by moving the house to this location and therefore we need a variance.

Mondani- The house is being moved or demolished?

Reade- Combination of both.

McCarthy- I think looking at the application and the proposed work I think this request squarely fits into what the Variance is designed for and especially what we've done in the past for homes in this area and in Sconset that need to be moved away from eroding bluffs or coastlines to retain the ability to use the house and keep it viable as long as possible. I don't have any objections to this request.

Mondani- my only reservation on this is and I was surprised I didn't know there's erosion in Madaket Harbor. When I looked at these two pictures I don't I don't really see a lot of erosion in this case.

Saad- This was on the staff report, and I noticed after I saw the printout that that is not what I was looking at it's much different looking when you see it on a computer screen because there was a lot of green behind that house that's turned to sand and that's what I was trying to show and it didn't really show up because the GIS aerials are just very granulated pixelated photos.

Reade- We obviously also are dealing with sea level rise issues which we are being confronted with constantly and that is a further reason to deal with the location of the house as well as elevating the house and getting it into a more appropriate location on the site.

Allen- Is there a way of relocating it and conforming?

Reade- No, we have gone as close as we possibly can granted the wetlands in connection with the notice of intent of the Conservation Commission

Allen- Are you increasing the square footage?

Reade- No

McCarthy- I was relying more on the plan from Jeff Blackwell that's dated May 10, 2023, that shows corner of the deck is right up against that Coastal Bank.

Voting McCarthy, O'Mara, Allen, Brescher, Mondani

Discussion

Motion **Motion to Approve relief as requested.** (made by: Allen) (seconded by: Brescher)

7.10-23 Nantucket Cottage Hospital

16 Vesper Lane

Beaudette

Discussion (2:11:09) **Beaudette-** This property is currently owned by Nantucket Cottage Hospital and it's an oversized lot in the CN District with almost two acres in a district that only requires 7 500 square feet. The property is non-conforming and has no frontage whatsoever. It's accessed through an easement through the Coast Guard property. We are seeking a Variance seeking to create additional lots on 16 Vesper and those lots would also not have frontage. The proposal is to divide 16 into four lots, one with the existing housing structure on it that the hospital will continue to use and the other three lots created are oversized lots. The proposal meets the standard for a Variance as certainly the applicant and the affordable housing Trust would have a substantial hardship.

Brescher- Do we still get Planning Board recommendations on ZBA applications?

Saad- I don't think I heard anything from the Planning Board on this one.

Brescher- Ultimately, I think I'm inclined to vote for this Variance; however, I'll be the first to say that this is something that I would certainly defer to the Planning Board or like to see the Planning Board have comments on any types of restrictions or recommendations that they would have relative to this since they normally deal with these types of subdivisions.

McCarthy- Were you looking for an easement with the Coast Guard or did that get resolved?

Beaudette- No, we have an easement with the Coast Guard, they originally objected and then you know since then the reason we haven't come back and opened the hearing is because we were negotiating with them. Their only condition was if there's anything that's constructed, they want to instead grant us a separate temporary easement to the west for just construction purposes so that construction trucks aren't coming through the Coast Guard property that was their only concern.

Brescher- The relief is so that you guys get three buildable lots right?

Beaudette- The relief is to create three new vacant lots in addition to the lot that we'll keep. Those are the three lots that go to the Affordable Housing Trust and I know that the trust isn't sure what they're going to do with it yet specifically, but I think the chances are that it's going to be used as one lot.

Brescher- Have you gone through for an ANR yet?

Beaudette- No we haven't, and I know that you usually ask for the Planning Board's opinion and I know it's been vetted for a year and a half through the Plus Department and it certainly has their blessing.

Sullivan- We're excited to work with the hospital, this has been a long road in acquiring the property from UMass and then be able to get to the table with the hospital to kind of create both an affordable housing need and then a hospital need. They have worked very hard with the Coast Guard on our behalf and to get to the table here. We recently worked with the Plus Department on the concept of bringing forth the three lots. The plan as drawn was recommended to us by the officers at PLUS and it's why we're here today in conjunction with the hospital.

Allen- If this became three lots would each lot only be allowed to have one dwelling on it?

Beaudette- Part of what Sully is talking about is that having the three lots gives them the maximum flexibility to do what they want to do as a member right so no I think the trust is able to put as many dwellings as possible that could go on the property in the CN district.

McCarthy- What you were thinking about for conditions or you're just looking for guidance?

Brescher- I was looking more so for guidance because you could do conditions, if need be, but the client is requesting basically three buildable lots and hypothetically if they constructed a road through there, they could get three buildable lots. I was just more curious about what planning would say because they're doing an ANR subdivision without doing an ANR subdivision by virtue of an easement.

Beaudette- I think we would overburden the easement if we specifically applied for an ANR subdivision potentially. I'm unaware of any ANR subdivision that's created on a landlocked lot.

O'Mara- It's for the community obviously and if the Board was so inclined, we could continue it to next month and maybe have Leslie come up with some conditions that would be appropriate for parking.

Brescher- Ultimately, I think I'm leaning in favor of this, we just need some guidance.

Continued to July 13, 2023

Voting McCarthy, O'Mara, Allen, Brescher, Poor

Discussion

Motion **Motion to Continue to July 13, 2023.** (made by: Brescher) (seconded by: O'mara)

V. OTHER BUSINESS

1. APPOINTMENT OF ZONING ADMINISTRATORS

McCarthy- We have an announcement that Libby should be appointing Megan and Billy as the Zoning Administrators.

Saad- The Zoning Administrator duties are covered under the contract of the Land Use Specialist so moving me and Megan in is sort of the simplest maneuver given that Andrew's leaving.

Brescher- Do we need to ratify it as well once they've been appointed?

McCarthy- We used to, but it turns out at some point there was a discovery that the Bylaw and the Charter were at odds and so only the Town Manager appoints.

VI. ADJOURNMENT

Motion **Motion to Adjourn.** (made by: Brescher) (seconded Allen)

Vote Carried unanimously

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

1. None

Submitted by:

Nickesha Sheriff

OLD BUSINESS

Harris on Weweeder LLC

File No. 09-22

50 Weweeder Ave

VARIANCE

Continued to August 10, 2023

STEVEN L. COHEN
&
CHRISTOPHER P. CHOMA
TRUST

File No. 20-22

29 MONOMOY ROAD

VARIANCE

Continued to August 10, 2023

Kristina & Nicholas
AMENDOLARE

File No. 37-21

8 Bank St

SPECIAL PERMIT

Requests to Withdraw without Prejudice

NOB ACK, LLC

File No. 06-23

2 NOBADEER WAY

VARIANCE

Requests to Withdraw without Prejudice

**CHARLES B. JOHNSON
AS TRUSTEE OF
SHADOW NOMINEE
TRUST**

File No. 07-23

4 HARBOR SQUARE

APPEAL

SARAH F. ALGER, P.C.

ATTORNEYS AT LAW

FOUR NORTH WATER STREET • NANTUCKET, MASSACHUSETTS • 02554

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JOHN R. ALGER
1931-2007

April 14, 2023

BY HAND

Paul Murphy, Building Commissioner
Town of Nantucket
2 Fairgrounds Road
Nantucket, Massachusetts 02554

Re: Straight Wharf Fish Market

Dear Paul:

Enclosed please find a copy of the appeal.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Holly Fernandes", written over the word "Sincerely,".

Holly Fernandes, Legal Assistant
to Sarah F. Alger, P.C.

Enclosures

Town of Nantucket

Zoning Board of Appeals

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

PROPERTY OWNER...NIR Retail LLC.....
MAILING ADDRESS...c/o Sarah F. Alger, P.C., 4 North Water Street, Nantucket, MA 02554
PROPERTY LOCATION...4 Harbor Square, Nantucket, Massachusetts.....
ASSESSOR MAP/PARCEL...Map 42.2.4, Parcel 1.....
SUBMITTED BY...Sarah F. Alger, P.C.....

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 11 and Zoning Code Chapter 40A, Section 139-29B (2)).

March 16, 2023

DATE

Mary L.
Haley

Digitally signed by
Mary L. Haley
Date: 2023.03.16
08:04:28 -04'00'

ASSESSOR'S OFFICE
TOWN OF NANTUCKET



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

2023 APR 14 PM 3:56
TOWN OFFICE

APPLICATION

Fee: \$450.00

File No. _____

Owner's name(s): NIR Retail LLC
New England Development Accounting Department, 75 Park Plaza #3
Mailing address: Boston, MA 02116

Phone Number: _____ E-Mail: _____

Applicant's name(s): Charles B. Johnson, as Trustee of Shadow Nominee Trust*
c/o Sarah F. Alger, P.C., 4 North Water Street
Mailing Address: Nantucket, Massachusetts 02554

Phone Number: 508-228-1118 E-Mail: sfa@fapc.com

Locus Address: 4 Harbor Square Assessor's Map/Parcel: Map 42.2.4, Parcel 1

Land Court Plan/Plan Book & Page/Plan File No.: Lot 11, LCP 10222-E
Doc. 156595

Deed Reference/Certificate of Title: COT 17791 Zoning District Commercial Downtown
("CDT")

Uses on Lot- Commercial: None Yes (describe) _____
Residential: Number of dwellings _____ Duplex _____ Apartments _____

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

Building Permit Numbers: 2021-03-0121; 2021-10-0184; 2021-12-0196; and
2023-01-3868

Previous Zoning Board Application Numbers: _____

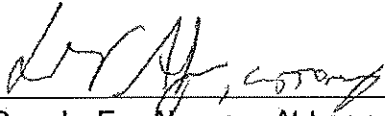
* and Old North Wharf Cooperative, Inc.

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

See attached addendum

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*
Sarah F. Alger, Attorney

*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: __/__/__

ADDENDUM

Appeal by Charles B. Johnson, as Trustee of Shadow Nominee Trust, and Old North Wharf Cooperative, Inc.

Pursuant to Mass. Gen. Laws c. 40A, §§8 and 15 and Nantucket Zoning By-law (the "By-law") §§139-25 (Enforcement, remedies, penalties) and 139-31 (Appeals), the Appellants, Charles B. Johnson, as Trustee of Shadow Nominee Trust, and Old North Wharf Cooperative, Inc., hereby appeal (a) the issuance of Building Permit #BLDC-2023-01-3868 (the "Building Permit") for the property on Straight Wharf, known as 4 Harbor Square, Nantucket (the "Project"); and (b) the determination of the Building Commissioner dated March 31, 2023, a copy of which is attached hereto, not to take enforcement action and rescind the Building Permit and require the Project to apply for and obtain a Major Commercial Development ("MCD") Special Permit under By-law §139-11. The Project is located on the property on Straight Wharf shown as Parcel 1 on Nantucket Tax Assessor's Map 42.2.4 and being Lot 11 on Land Court Plan No. 10222-E, now owned by NIR Retail LLC, a Delaware limited liability company ("NIR Retail") by virtue of Certificate of Title No. 21819 at the Nantucket Registry District of the Land Court (the "Property").

A formal request for zoning enforcement pursuant to By-law §139-25 was made to the Building Commissioner on March 21, 2023, copy attached, asking that the Building Permit be revoked, because the Project does not have the required MCD Special Permit under By-law §139-11 in violation of the By-law. By letter dated March 31, 2023, the Building Commissioner declined to take enforcement action and revoke the Building Permit.

By way of background, the existence of the Building Permit was only brought to light on March 15, 2023, in connection with the Select Board's public hearings on the applications for liquor and entertainment licenses for the Project. The file was apparently mis-filed and could not be located. A copy of the Building Permit was provided by the PLUS Department on March 15, 2023, and the file was subsequently found.

The Building Permit states that it is to "RENOVATE EXISTING DWELLING AS PER HCD APPROVED PLANS SEE ATTACHED ARCHITECTURAL PLANS SEE ATTACHED HDC PLANS." Section 2.E of the Building Permit recites that the "Proposed Use" is "Retail/Restaurant."

Presumably, the reference to the renovation of an existing dwelling in the Building Permit is an inadvertent error by the applicant. There is no dwelling at the Project site. The Project site is the former location of the Straight Wharf Fish Market and Stars Ice Cream and has been used as a retail fish market and take-out food establishment. The businesses at the Project site have not historically had a liquor license or provided restaurant service.

The change in use of the Project site to a sixty-two (62) seat restaurant triggers the threshold for issuance by the Nantucket Planning Board of an MCD Special Permit pursuant to By-law §139-11.

Under By-law §139-11.B, an MCD is:

"defined as a single commercial structure or use, or a group of commercial structures or uses, which is proposed to be constructed on a single lot or tract of land or on contiguous tracts of land and held in common ownership or control, meeting, in the aggregate, any one or more of [a defined set of criteria]."

One of those criteria, as set forth in By-law §139-11.B(5), is "[r]estaurant, club and/or bar use with a combined rated legal occupancy of 100 or more." Although the uses on the Property and on contiguous properties held in common ownership and control may also meet or exceed other criteria set forth in By-law §139-11.B, it is not necessary to go beyond By-law §139-11.B(5) to determine that the Project, together with the other uses on the Property, comprises an MCD within the meaning of the By-law.

By-law §139-11.C provides that "[p]reexisting nonconforming uses shall be subject to this subsection when any extended or altered portion of the commercial use(s), added together starting from the effective date (April 4, 1979, as amended), meets or exceeds the criteria of Subsection B above, which defines a [sic] MCD." As a result, although some of the uses on the Property may qualify as preexisting, nonconforming uses, the alterations and extensions of those commercial uses that have occurred since 1979, when taken together, cause the Property to become an MCD, requiring the issuance by the Planning Board of an MCD Special Permit under By-law §139-11.

The other commercial uses on the Property on which this sixty-two (62) seat restaurant is proposed to be located include, but are not limited to, Provisions, The Tavern, the Gazebo, Cru, and Straight Wharf restaurants, as well as several retail shops. The Property is owned by NIR Retail. NIR Retail also owns, among other parcels, the contiguous parcels shown as Parcel 15 (Straight Wharf), Parcel 35 (One New Whale Street), Parcel 2 (Old North Wharf), and Parcel 11 (11 New Whale Street). The commercial uses on these contiguous parcels include, but are not limited to, Hy-Line Cruises, Oath Pizza, Slip 14, Bar Yoshi, the Anglers Club, numerous retail shops, and the entire Boat Basin.

The "combined rated legal occupancy" of the proposed new sixty-two (62) seat restaurant at the Project is not set forth in the building permit materials, but if it is one hundred (100) or more (and it must be close), then the MCD threshold is exceeded. And, even if this restaurant on its own does not trigger the need for an MCD Special Permit, then certainly the "extended or altered portion of the commercial use(s) [on the Property and the contiguous parcels in common ownership], added together starting

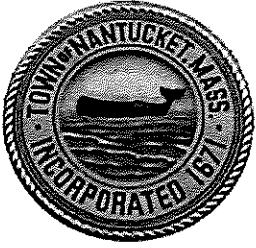
from the effective date [of By-law \$139-11] (April 4, 1979, as amended), meets or exceeds the criteria of Subsection B" of By-law \$139-11, as provided in By-law \$139-11.C, and an MCD special permit is required for the proposed restaurant use.

The COI Tracking spreadsheet created by the PLUS Department in March 2019 (copy attached), shows, among other things, the changes in occupancy for licensed restaurants from 2015 to 2019. Extracting the data for four (4) of the restaurants that are on the same parcel or contiguous parcel as the proposed Straight Wharf Fish Market, being Cru, Slip 14, Straight Wharf Restaurant, and the Tavern and adding the information for Bar Yoshi, which is a new restaurant since 2019, contained in the application for amendments to its liquor license that was part of the Select Board package for its March 15, 2023, meeting, reveals that the total change in occupancy for these five (5) restaurants since just 2015 is 341, and that number is before the proposed addition of a sixty-two (62) seat restaurant at the new Straight Wharf Fish Market. The resulting spreadsheet is attached. Although the proposed occupancy for the new restaurant at the Project does not appear to be available, it is safe to say that it will be well in excess of sixty-two (62).

Given that the threshold for an MCD under By-law \$139-11.B "on a single lot or tract of land or on contiguous tracts of land and held in common ownership or control" includes "[r]estaurant, club and/or bar use with a combined rated legal occupancy of 100 or more," and that under By-law \$139-11.C, "[p]reexisting nonconforming uses shall be subject to this subsection when any extended or altered portion of the commercial use(s), added together starting from the effective date (April 4, 1979, as amended), meets or exceeds the criteria of [By-law \$139-11.]B," it is not necessary to go further back than 2015 to easily recognize that this Property has already well surpassed the MCD threshold and requires an MCD Special Permit from the Planning Board. In fact, one needs not look beyond the Gazebo at the Tavern that is on the same lot as the Straight Wharf Fish Market and that in 1979 was used as a band stand for community band concerts and not as the bar it is today to conclude that this Property requires as MCD Special Permit.

Due to the lack of the required MCD Special Permit, the Project is in violation of the By-law, enforcement action is appropriate, and the Building Permit must be revoked. The Appellants request that the Zoning Board of Appeals reverse the determination of the Building Commissioner, revoke the Building Permit, order that the Project apply for and obtain an MCD Special Permit, and take such other and further action as the Board shall deem necessary or appropriate.

The Locus is located at 4 Harbor Square, Nantucket, Nantucket County, Massachusetts, shown on Nantucket Tax Assessor's Map 42.2.4, as Parcel 1, and is in the Commercial Downtown ("CDT") Zoning District.



Planning and Land Use Services

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

BUILDING DIVISION

March 31, 2023

Sarah F. Alger, PC
4 North Water Street
Nantucket, MA 02554

Reference: Straight Wharf Fish Market, Straight Wharf, Map 42.2.4, Parcel 1

Dear Attorney Alger,

I am in receipt of your zoning enforcement request dated March 21, 2023, with regard to the property referenced above. I will not pursue zoning enforcement at this time because, in my opinion, the building permit was properly issued.

If you are 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
Building Commissioner
Town of Nantucket

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

Sarah Alger

From: Sarah Alger
Sent: Tuesday, March 21, 2023 21:20
To: Paul Murphy
Cc: Andrew Vorce (avorce@nantucket-ma.gov); Leslie Woodson Snell (lwsnell@nantucket-ma.gov); C. Elizabeth Gibson (lgibson@nantucket-ma.gov); DANIELLE DEBENEDICTIS; Arthur D. Gasbarro (art@nantucketengineer.com); Megan Trudel; Amy Baxter; Marcus Silverstein; David, Pat (patdavid0126@gmail.com); Erika Mooney (EMooney@nantucket-ma.gov); jmbridges@nantucket-ma.gov; STRAIGHT WHARF - Gabriel Frasca (gabrielfrasca@gmail.com); kevin burleson; Holly Visco; John Twohig (jtwohig@neddevelopment.com)
Subject: RE: Straight Wharf Fish Market, Straight Wharf, Map 42.2.4, Parcel 1
Attachments: Murphy ltr 03.09.2023.pdf; COI Increases 2015-2021.pdf; COI Tracking 030619.xlsx

Dear Commissioner Murphy,

I represent the Old North Wharf Cooperative, Inc., owner of the properties on Old North Wharf directly abutting the above property on Straight Wharf, sometimes referred to as 4 Harbor Square.

Please consider this email as a formal request for zoning enforcement pursuant to Nantucket Zoning By-law (the "By-law") §139-25. Specifically, I am requesting that Building Permit BLDC-2023-01-3868 be revoked, because the project does not have the required Major Commercial Development ("MCD") Special Permit under §139-11 in violation of the By-law.

As you are aware, the existence of this building permit was only brought to light last week in connection with the Select Board's public hearings on the applications for liquor and entertainment licenses at the above property. The file was apparently mis-filed and could not be located. We were able to get a copy of the permit on March 15, 2023, and I understand that the file has since been found.

The building permit at issue, Building Permit BLDC-2023-01-3868, states that it is to "RENOVATE EXISTING DWELLING AS PER HCD APPROVED PLANS SEE ATTACHED ARCHITECTURAL PLANS SEE ATTACHED HDC PLANS." Section 2.E of that permit recites that the "Proposed Use" is "Retail/Restaurant."

Presumably, the reference to the renovation of an existing dwelling is an inadvertent error by the applicant. I do not believe that there is a dwelling at this property. My understanding is that the property, the former site of the Straight Wharf Fish Market and Stars Ice Cream, has been used as a retail fish market and take-out food establishment and has not historically had a liquor license.

As set forth in my March 9, 2023, letter, copy attached, the change in use of this property to a sixty-two (62) seat restaurant triggers the threshold for issuance by the Nantucket Planning Board of an MCD Special Permit pursuant to By-law §139-11. As you know, under By-law §139-11.B, an MCD is:

"defined as a single commercial structure or use, or a group of commercial structures or uses, which is proposed to be constructed on a single lot or tract of land or on contiguous tracts of land and held in common ownership or control, meeting, in the aggregate, any one or more of [a defined set of criteria]."

One of those criteria, as set forth in By-law §139-11.B(5), is "[r]estaurant, club and/or bar use with a combined rated legal occupancy of 100 or more." Although the uses on this particular property and on contiguous properties held in common ownership and control may also meet or exceed other criteria set forth in By-law §139-11.B, it is not necessary to go beyond By-law §139-11.B(5) to see that this property comprises an MCD within the meaning of the By-law.

By-law §139-11.C provides that “[p]reexisting nonconforming uses shall be subject to this subsection when any extended or altered portion of the commercial use(s), added together starting from the effective date (April 4, 1979, as amended), meets or exceeds the criteria of Subsection B above, which defines a [sic] MCD.” As a result, although some of the uses on this property may qualify as preexisting, nonconforming uses, the alterations and extensions of those commercial uses that have occurred since 1979, when taken together, cause the property to become an MCD, requiring the issuance by the Planning Board of an MCD Special Permit.

The other commercial uses on the parcel on which this sixty-two (62) seat restaurant is proposed to be located include, but are not limited to, Provisions, The Tavern, the Gazebo, Cru, and Straight Wharf restaurants, as well as several retail shops. The parcel is owned by NIR Retail LLC. NIR Retail LLC also owns, among other parcels, the contiguous parcels shown as Parcel 15 (Straight Wharf), Parcel 35 (One New Whale Street), Parcel 2 (Old North Wharf), and Parcel 11 (11 New Whale Street). The commercial uses on these contiguous parcels include, but are not limited to, Hy-Line Cruises, Oath Pizza, Slip 14, Bar Yoshi, the Anglers Club, numerous retail shops, and the entire Boat Basin.

As stated in my March 9, 2023, letter, the “combined rated legal occupancy” of this proposed new sixty-two (62) seat restaurant is not set forth in any of the materials that I have seen thus far, but if it is one hundred (100) or more (and it must be close), then the MCD threshold is exceeded. And, even if this restaurant on its own does not trigger the need for an MCD Special Permit, then certainly the “extended or altered portion of the commercial use(s) [on this parcel and the contiguous parcels in common ownership], added together starting from the effective date [of By-law §11] (April 4, 1979, as amended), meets or exceeds the criteria of Subsection B” of By-law §139-11, as provided in By-law §139-11.C, and an MCD special permit is required for the proposed restaurant use.

As I mentioned in my March 15, 2023, email, I looked at the COI Tracking spreadsheet that Leslie Snell put together in March 2019 (copy attached). This spreadsheet shows, among other things, the changes in occupancy for licensed restaurants from 2015 to 2019. I extracted the data for four (4) of the restaurants that are on the same parcel or contiguous parcel as the proposed Straight Wharf Fish Market, being Cru, Slip 14, Straight Wharf Restaurant, and the Tavern. I then added the information for Bar Yoshi, which is a new restaurant since 2019, using the information contained in the application for amendments to its liquor license that was part of the Select Board package for its March 15, 2023, meeting. The resulting spreadsheet is attached.

As you will see, the total change in occupancy for these five (5) restaurants since just 2015 is 341, and that number is before the proposed addition of a sixty-two (62) seat restaurant at the new Straight Wharf Fish Market. I do not know what the proposed occupancy for this new restaurant is, but it is safe to say that it will be well in excess of sixty-two (62). Given that the threshold for an MCD §139-11.B “on a single lot or tract of land or on contiguous tracts of land and held in common ownership or control” includes “[r]estaurant, club and/or bar use with a combined rated legal occupancy of 100 or more,” and that under By-law §139-11.C, “[p]reexisting nonconforming uses shall be subject to this subsection when any extended or altered portion of the commercial use(s), added together starting from the effective date (April 4, 1979, as amended), meets or exceeds the criteria of [By-law §139-11.]B,” you do not have to go back behind 2015 to easily recognize that this property has already well surpassed the MCD threshold and requires an MCD Special Permit from the Planning Board. In fact, you need not look beyond the Gazebo at the Tavern that is on the same lot as the Straight Wharf Fish Market and that in 1979 was used as a band stand for community band concerts and not as the bar it is today to conclude that this property requires as MCD Special Permit.

Due to the lack of the required MCD Special Permit, the project is in violation of the By-law, and I request that you take enforcement action and revoke Building Permit BLDC-2023-01-3868.

Thank you for your consideration and attention to this matter.

Regards,

Sarah Alger

Sarah F. Alger, PC

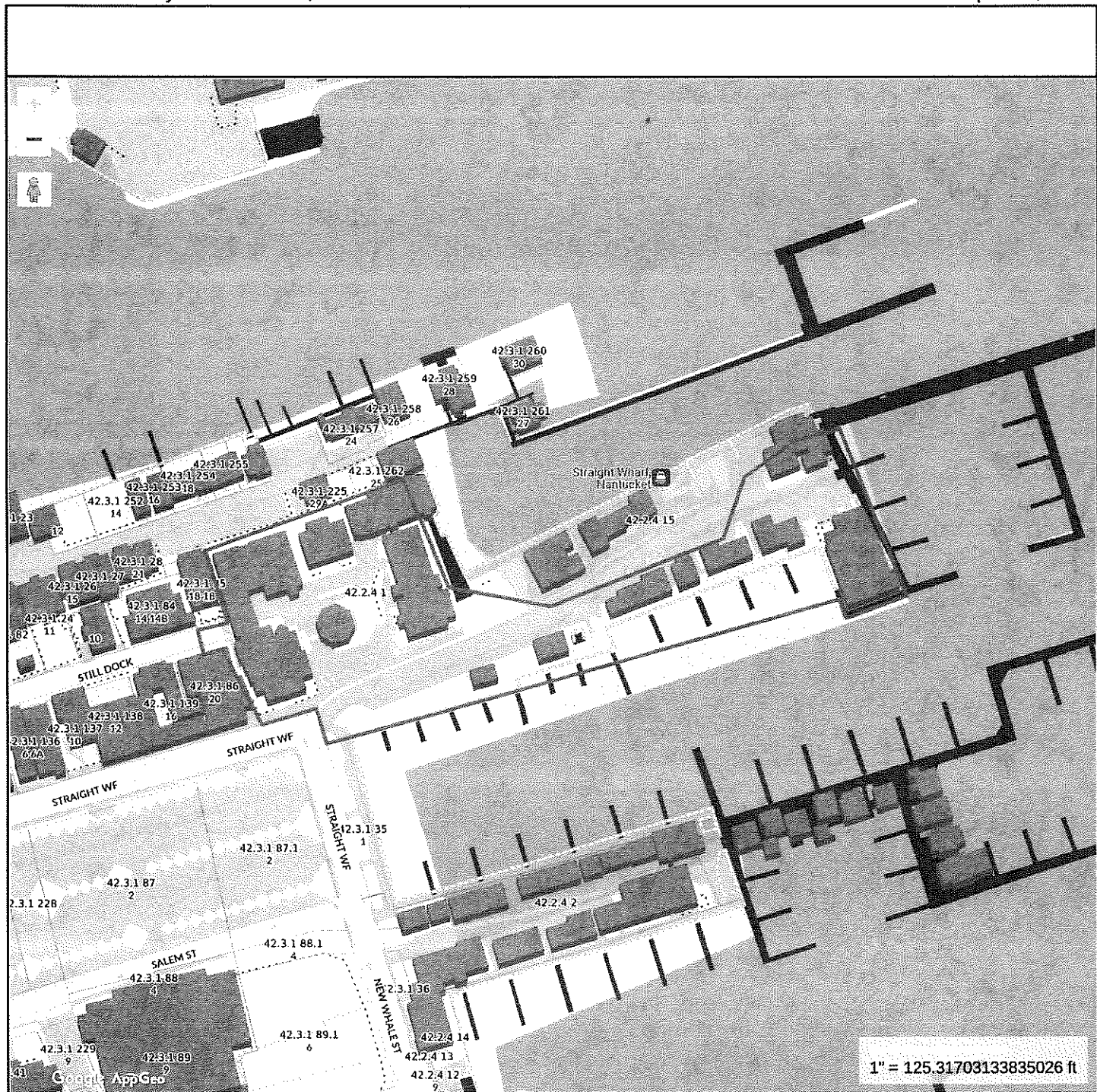
Four North Water Street
Nantucket, Massachusetts 02554
508-228-1118 telephone
508-228-8004 fax

Five Parker Road
Osterville, Massachusetts 02655
508-428-8594 telephone
508-420-3162 fax

WIRE FRAUD ALERT: *Email hacking to fraudulently misdirect funds is on the rise. ALWAYS CONFIRM WIRE INSTRUCTIONS. If you receive an e-mail or other communication from this office requesting that you wire or otherwise transfer funds, please call a known contact person at this firm using a telephone number found through an independent source to verify the request and any corresponding instructions before you initiate any transfer. Please do not rely on an email that appears to originate from this office. We are not responsible for any wires sent by you to an incorrect bank account. Our wiring instructions never change.*

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Business Name	Expiration 2015	Expiration 2019	2021	Occupancy Increase
Bar Yoshi			56	56
Cru	First Floor A3 42, Patio 60, On-Premise License, 5/31/15	First Floor A2 80 Patrons, Patio A2 22 Patrons, Employees 15, On-Premise License, 5/31/19		15
Slip 14	First Floor B 25, Third Floor R3 5, Patio A3 45, On-Premise License, 5/31/15	First Floor Inside: A2 30 seats 30 standing, Second Floor 7 staff, Third Floor R3 5, Patio A2 54 seats 113 standing, Take-Out Area 26 standing Other: Max Occ 1st floor 135, On-Premise License, 5/31/19		85
Straight Wharf Restaurant	COI not in file	First Floor A2 120, Patio A2 40 Other: Occ includes deck seating and bar, On-Premise License, 5/31/19		0
Tavern Restaurant	First Floor A3 89, Second Floor A3 91, On-Premise License, 5/31/15	First Floor A2 44, Second Floor A2 91, Patio 101, Gazebo 49, On-Premise License, 5/31/19		185
				341



Property Information

Property ID 42.2.4.1
 Location STRAIGHT WF
 Owner NIR RETAIL 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 11/14/2022
 Data updated Jan. 2021

Print map scale is approximate.
 Critical layout or measurement
 activities should not be done using
 this resource.

NIR RETAIL LLC
 C/O NEW ENGLAND DEVELOP-ACCTING
 DEPT
 75 PARK PLAZA #3
 BOSTON, MA 02116

NIR RETAIL LLC
 NEW ENGLAND DEVELOP-ACCTING DEPT
 75 PARK PLAZA #3
 BOSTON, MA 02116

AEDCONW LLC
 6500 ROCK SPRING DRIVE STE 5
 BETHESDA, MD 20817

PUNNETT NICHOLAS TRST
 ENTERPRISE TRUST
 49 MILK STREET
 NANTUCKET, MA 02554

FARRELL ACK LLC
 2100 INLET DR
 FORT LAUDERDALE, FL 33316

NANTUCKET ELECTRIC COMPANY
 C/O PROPERTY TAX DEPT
 40 SYLVAN RD
 WALTHAM, MA 02451

RYAN MATTHEW E TR ET AL
 C/O GW & WADE LLC
 93 WORCESER RD
 WELLESLEY, MA 02481

MITCHELL JAMES H & NANCY B
 6 FERNWOOD RD
 CHESTNUT HILL, MA 02467

SAMPER HECTOR MILKO & NANCY
 LEATHER
 3271 MYRTLE OAK CT
 BONITA SPRINGS, FL 34134

ACK18SD LLC
 52 HUMMOCK POND RD
 NANTUCKET, MA 02554

NANTUCKET ELECTRIC COMPANY
 C/O PROPERTY TAX DEPT
 40 SYLVAN RD
 WALTHAM, MA 02451-2286

BRANT POINT PARTNERS LLC
 251 MAIN STREET
 HUNTINGTON, NY 11743

GOLDENEYE LLC
 C/O DAVID MALM
 220 BOYLSTON ST # 9009
 BOSTON, MA 02116

MALONEY ROSALIE T FKA GRENNAN
 2430 TRACY PLACE NW
 WASHINGTON, DC 20008

NIR RETAIL LLC
 C/O NEW ENGLAND DEVELOP-ACCTING
 DEPT
 75 PARK PLAZA #3
 BOSTON, MA 02116

SANFORD CHRISTINE C TR
 FOUR STARBUCK COURT NOM TRUST
 3 MILL STREET
 NANTUCKET, MA 02554

GIFFORD JOHN F TR
 15 THOMAS PL
 NORWALK, CT 06853

MACANINCH ANDREW S ETAL
 838 PARK AVENUE APT 4
 HOBOKEN, NJ 07030

LAGARCE SUSAN M
 29 CROSSTREE HOLLOW
 NORTH CHATHAM, MA 02650

NIR SALEM ST LLC
 C/O NEW ENGLAND DEVELOPMENT
 75 PARK PLAZA #3
 BOSTON, MA 02116

NIR RETAIL LLC
 C/O NEW ENGLAND DEVELOP-ACCTING
 DEPT
 75 PARK PLAZA #3
 BOSTON, MA 02116

ANDREWS VIRGINIA F
 P O BOX 1182
 NANTUCKET, MA 02554

SEASCENE LLC
 6500 ROCK SPRING DR SUITE 5
 BETHESDA, MD 20817

HAYES JOHN J III TRUSTEE
 COBB-HAYES REALTY TRUST
 PO BOX 1364
 NANTUCKET, MA 02554

NIR RETAIL LLC
 C/O NEW ENGLAND DEVELOP-ACCTING
 DEPT
 75 PARK PLAZA #3
 BOSTON, MA 02116

KILLEN PATIENCE E
 PO BOX 606
 NANTUCKET, MA 02554

SIMBLARIS LAMPE LEAH TRST
 OLDNAN REALTY TRUST
 17 SMITHS POINT RD
 MANCHESTER, MA 01944

McGLINN THOMAS B
 C/O ROCKLAND TRUST CO
 22 WIANNO AV
 OSTERVILLE, MA 02655

HAYES JOHN
 PO BOX 1364
 NANTUCKET, MA 02554

NIR NEW WHALE ST LLC
 C/O NIR SALEM ST LLC
 75 PARK PLAZA #3
 BOSTON, MA 02116

NIR SALEM ST LLC
C/O NEW ENGLAND DEVELOPMENT
75 PARK PLAZA #3
BOSTON, MA 02116

NIR SALEM ST LLC
C/O NEW ENGLAND DEVELOPMENT
75 PARK PLAZA #3
BOSTON, MA 02116

ISLAND HARBOR FARM LLC
C/O NEW ENGLAND DEVELOPMENT
75 PARK PLAZA #3
BOSTON, MA 02116

GTKT LLC
11568 KLING ST
NORTH HOLLYWOOD, CA 91602

NIR RETAIL LLC
NEW ENGLAND DEVELOP-ACCTING DEPT
75 PARK PLAZA #3
BOSTON, MA 02116

OLD NORTH WHARF COOPERATIVE INC
PO BOX 187
NANTUCKET, MA 02554

NIR SALEM ST LLC
C/O NEW ENGLAND DEVELOPMENT
75 PARK PLAZA #3
BOSTON, MA 02116

NIR SALEM ST LLC
C/O NEW ENGLAND DEVELOPMENT
75 PARK PLAZA #3
BOSTON, MA 02116

OLD NORTH WHARF COOPERATIVE INC
13 PLEASANT ST
NANTUCKET, MA 02554

OLD NORTH WHARF COOPERATIVE INC
C/O SANFORD COTTAGE TRUST
1 N BEACH ST
NANTUCKET, MA 02554

OLD NORTH WHARF COOPERATIVE INC
C/O HARVEY C JONES TRST
300 RIDGEVIEW DR
PALM BEACH, FL 33480

OLD NORTH WHARF COOPERATIVE INC
C/O COLEMAN BURKE, NORTH RIVER
COMPANY LLC
610 W 26TH ST SUITE 910
NEW YORK, NY 10001

OLD NORTH WHARF COOPERATIVE INC
WHARF RAT CLUB
P O BOX 664
NANTUCKET, MA 02554

OLD NORTH WHARF COOPERATIVE INC
C/O QUICK CHRISTOPHER C
10 EDGEWOOD DR #3A
GREENWICH, CT 06831

OLD NORTH WHARF COOPERATIVE INC
HOS MBS NANTUCKET LLC
410 W OHIO AVE
MIDLAND, TX 79701-4331

OLD NORTH WHARF COOPERATIVE INC
HOS MBS NANTUCKET LLC
410 W OHIO AVE
MIDLAND, TX 79701-4331

OLD NORTH WHARF COOPERATIVE INC
C/O C BREEZE LLC
322 SOUTH ASAPH ST
ALEXANDRIA, VA 23314

OLD NORTH WHARF COOPERATIVE INC
C/O ROSE JOE
555 BRYANT ST # 347
PALO ALTO, CA 94301

OLD NORTH WHARF COOPERATIVE INC
C/O AUDAX GROUP - FIX
101 HUNTINGTON AV
BOSTON, MA 02199

OLD NORTH WHARF COOPERATIVE INC
C/O JOHNSON CHARLES B TR
1220 SOUTH OCEAN BLVD
PALM BEACH, FL 33480

WOODS HOLE MARTHAS VINEYARD &
NANTUCKET STEAMSHIP AUTH
NANTUCKET STEAMSHIP AUTH
1 STEAMBOAT WHARF
NANTUCKET, MA 02554

NIR RETAIL LLC
 C/O NEW ENGLAND DEVELOP-ACCTING
 DEPT
 75 PARK PLAZA #3
 BOSTON, MA 02116

NANTUCKET ELECTRIC COMPANY
 C/O PROPERTY TAX DEPT
 40 SYLVAN RD
 WALTHAM, MA 02451-2286

NIR RETAIL LLC
 C/O NEW ENGLAND DEVELOP-ACCTING
 DEPT
 75 PARK PLAZA #3
 BOSTON, MA 02116

NIR RETAIL LLC
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 251 MAIN STREET
 HUNTINGTON, NY 11743

ANDREWS VIRGINIA F
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 6500 ROCK SPRING DRIVE STE 5
 BETHESDA, MD 20817

GOLDENEYE LLC
 C/O DAVID MALM
 220 BOYLSTON ST # 9009
 BOSTON, MA 02116

SEASCENE LLC
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PUNNETT NICHOLAS TRST
 ENTERPRISE TRUST
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 NANTUCKET, MA 02554

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 COBB-HAYES REALTY TRUST
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FARRELL ACK LLC
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NIR RETAIL LLC
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 DEPT
 75 PARK PLAZA #3
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 FOUR STARBUCK COURT NOM TRUST
 3 MILL STREET
 NANTUCKET, MA 02554

KILLEN PATIENCE E
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RYAN MATTHEW E TR ET AL
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SIMBLARIS LAMPE LEAH TRST
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MITCHELL JAMES H & NANCY B
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 OSTERVILLE, MA 02655

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 LEATHER
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HAYES JOHN
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ACK18SD LLC
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 NANTUCKET, MA 02554

NIR SALEM ST LLC
 C/O NEW ENGLAND DEVELOPMENT
 75 PARK PLAZA #3
 BOSTON, MA 02116

NIR NEW WHALE ST LLC
 C/O NIR SALEM ST LLC
 75 PARK PLAZA #3
 BOSTON, MA 02116

NIR SALEM ST LLC
C/O NEW ENGLAND DEVELOPMENT
75 PARK PLAZA #3
BOSTON, MA 02116

NIR SALEM ST LLC
C/O NEW ENGLAND DEVELOPMENT
75 PARK PLAZA #3
BOSTON, MA 02116

ISLAND HARBOR FARM LLC
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GTKT LLC
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75 PARK PLAZA #3
BOSTON, MA 02116

NIR SALEM ST LLC
C/O NEW ENGLAND DEVELOPMENT
75 PARK PLAZA #3
BOSTON, MA 02116

OLD NORTH WHARF COOPERATIVE INC
13 PLEASANT ST
NANTUCKET, MA 02554

OLD NORTH WHARF COOPERATIVE INC
C/O SANFORD COTTAGE TRUST
1 N BEACH ST
NANTUCKET, MA 02554

OLD NORTH WHARF COOPERATIVE INC
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MIDLAND, TX 79701-4331

OLD NORTH WHARF COOPERATIVE INC
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MIDLAND, TX 79701-4331

OLD NORTH WHARF COOPERATIVE INC
C/O C BREEZE LLC
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ALEXANDRIA, VA 23314

OLD NORTH WHARF COOPERATIVE INC
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OLD NORTH WHARF COOPERATIVE INC
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WOODS HOLE MARTHAS VINEYARD &
NANTUCKET STEAMSHIP AUTH
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NANTUCKET, MA 02554

LETTERS

BEAUDETTE AND SWAIN
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OF COUNSEL
KEVIN F. DALE
WILLIAM F. HUNTER



Tuesday, April 11, 2023

VIA HAND DELIVERY

Leslie Woodson Snell, AICP, LEED ® AP
Deputy Director of Planning and Zoning Administrator
Planning and Land Use Services (PLUS)
2 Fairgrounds Road
Nantucket, MA 02554

Re: *NIR Retail LLC, Straight Wharf Fish Store*

Dear Leslie:

As you are aware, our clients NIR Retail, LLC are the owners of the building located on Straight Wharf (the "Wharf") known as 4 Harbor Square ("Premises"). The renovation of the Premises has been the subject of recent allegations by neighbors that the renovation is not permitted properly due to the purported need for a Major Commercial Development (MCD) Special Permit. These allegations are incorrect.

As we have discussed, a review of the occupancy numbers for finished space indicates that an MCD Special Permit is not required for this renovation because the Premises will have a rated legal occupancy of fewer than 100. In addition, our analysis of the Nantucket Zoning Bylaw § 139-11 also indicates that no other MCD Special Permit thresholds are triggered. I attach the occupancy analysis and the MCD analysis to this letter. Based on these analyses and the existence of duly issued building permits for the renovation, it is our opinion that an MCD Special Permit is not required in order to continue renovating the existing structure.

Sincerely,

Richard P. Beaudette

Straight Wharf / Commercial Wharf/ Old South Wharf

Special Permit Analysis

Nantucket Zoning – Why wharf uses do not trigger Special Permit Requirements

- There is a two-pronged test of whether commercial structures or uses (the “**Commercial Property**”) constitute a “major commercial development” (“**MCD**”) under Section 139-11 of the Nantucket Zoning By-Law:
 - The Commercial Property must be “a single commercial structure or use, or a group of commercial structures or uses, which is proposed to be constructed *[emphasis added]* on a single lot or tract of land or on contiguous tracts of land and held in common ownership or control . . .”
 - The Commercial Property must be of one of the sizes and uses specified in 139-11(B)(1)-(8), which include, e.g., restaurants of a “rated legal occupancy of 100 or more.”
- Both the Walters Fish Market Building at 4 Harbor Square on Straight Wharf and the other restaurants on Straight Wharf and Old South Wharf are existing and no new structure is “proposed to be constructed”. Therefore, neither the Walters Fish Market nor the other restaurants qualify as an MCD.
- A supplementary set of criteria for being an MCD is given at 139-11(C):
 - “Pre-existing nonconforming uses shall be subject to this subsection when any extended or altered portion of the commercial uses(s), added together starting from the effective date *[of the MCD requirement]* (April 4, 1979), as amended) meets or exceeds the criteria of Subsection B above, which defines a MCD.”
 - The proposed restaurant use at 4 Harbor Square is allowed as-of-right and is, therefore, not a pre-existing nonconforming use subject to 139-11(C).
 - The uses at the Nantucket Boat Basin, on Straight Wharf and Old South Wharf are not pre-existing nonconforming uses so extensions or alterations of those uses are not subject to the supplementary criteria quoted above.
- Therefore, nothing about the Walters Fish Market project triggers any MCD requirements.
- Restaurants of over 70 seats require a Special Permit.
 - Walters Fish Market will have fewer than 70 seats, so no special permit is required.

Straight Wharf Fish Restaurant Occupancy Count

Per code calculations, the total occupancy of the building is 74 occupants. It should be noted that this also includes outdoor dining (see below), which is generally not included in Building Occupancy calculations for egress purposes.

The restaurant has a maximum occupancy count of 63.

Outdoor seating: 12

Fixed Banquette seating: 18

Restaurant: 30 (15 net sf/occupant)

The other areas of the building has an occupancy of 14.

Commercial Kitchen: 3 (200 gross sf/occupant)

Fish Market (Mercantile): 8 (60 gross sf/occupant)

Office (Business): 1 (100 gross sf/occupant)

Storage (Mercantile Storage): 2 (300 gross sf/occupant)

Total Restaurant Occupancy with outdoor seating: 63

Total Restaurant Occupancy without outdoor seating: 51

**NIR RETAIL LLC
OPPOSITION
TO
PETITIONERS**

BEAUDETTE AND SWAIN
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OF COUNSEL
KEVIN F. DALE
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June 8, 2023

VIA HAND DELIVERY AND E-MAIL

Susan McCarthy, Chairwoman
Nantucket Zoning Board of Appeals
2 Fairgrounds Road
Nantucket, MA 02554

Re: Zoning Board of Appeals
Application No. 07-23
4 Harbor Square, Nantucket, MA 02554

**MEMORANDUM OF NIR RETAIL LLC IN OPPOSITION TO
PETITIONERS' APPEAL OF BUILDING COMMISSIONER'S MARCH 31, 2023
ORDER DENYING THEIR REQUEST TO REVOKE BUILDING PERMIT**

In accordance with §§ 139-29 and 139-31 of the Town of Nantucket Zoning Bylaw (the "Bylaw"), NIR Retail LLC ("NIR") submits this Opposition to the application filed by petitioners Charles B. Johnson, as Trustee of Shadow Nominee Trust ("Mr. Johnson"), and Old North Wharf Cooperative, Inc. ("ONWC") (together, "Petitioners") on April 14, 2023, which purports to appeal to the Zoning Board of Appeals (the "ZBA") the Building Commissioner's March 31, 2023 decision denying ONWC's March 21, 2023 request to revoke the building permit issued to NIR on January 20, 2023, No. 2023-01-3868 (the "Building Permit") to renovate the existing building (the "Building") situated on the property at 4 Harbor Square, Straight Wharf (Assessor's Map 42.2.4, Parcel 1) (the "Premises"). As is shown herein, the Petitioners' appeal must be denied because (i) Petitioners did not appeal the issuance of the Building Permit or either of the two earlier building permits issued with respect to the renovation project within the 30-day deadline specified

in G.L. c. 40A, § 15; and (ii) contrary to Petitioners’ assertions, NIR was not required to obtain a Major Commercial Development (“MCD”) Special Permit from the Nantucket Planning Board pursuant to § 139-11 of the Bylaw in order to renovate the Building.

FACTUAL BACKGROUND

A. The Premises and Proposed New Restaurant

NIR has owned the Premises since 2005. The Premises are located in the Commercial Downtown (CDT) zoning district in which a small restaurant with up to 70 seats is an allowed use as-of-right. See § 139-7A. The Building, which was originally constructed in 1966, was formerly occupied by the Straight Wharf Fish Market and Stars Ice Cream for more than 30 years. In June 2021, NIR entered into a lease (the “Lease”) with Straight Wharf Fish Market, LLC, d/b/a Straight Wharf Fish Market (“SWFM”), for the operation of a fish market and clam shack restaurant offering in-person and take-out dining at the Premises. One of the owners of SWFM, Gabriel Frasca, had previously operated the Straight Wharf Fish Market and Stars Ice Cream.

B. NIR Obtains the Necessary Permits and Approvals to Renovate the Building

Shortly after the Lease was signed, NIR and SWFM began the process of seeking the necessary permits, licenses and approvals from various municipal boards, commissions and departments within the Town of Nantucket to renovate the Building in order to operate a small restaurant therein, including: (i) a Certificate of Appropriateness from the Nantucket Historic District Commission; (ii) an Order of Conditions from the Nantucket Conservation Commission; (iii) a liquor license from the Nantucket Select Board and the Massachusetts Alcoholic Beverages Control Commission; (iv) a Common Victualler’s license from the Nantucket Select Board; and (v) certain building permits from the Nantucket Building Department.

In August, 2021, NIR submitted an application (No. 2021-08-4486) for a Certificate of Appropriateness from the Nantucket Historic District Commission (the “HDC”). The application described the project as “Renovation [o]f existing structure: new shingles, minor windows and door modification and replacement in kind of existing windows and doors, removal of small storage extension and updated outdoor refrigeration unit.” The application also included a series of schematic plans of the proposed renovation of the Building, which clearly depicted a restaurant and identified a portion of the first floor of the Building to be used for “Dining.” Notice of NIR’s application to the HDC was provided to a certified list of abutters, including but not limited to Petitioners, by certified mail on or about August 12, 2021. The HDC received confirmation that this notice was delivered to ONWC and Mr. Johnson on or about August 16, 2021.

On September 8, 2021, the HDC posted the agenda for its upcoming meeting on September 9, 2021, at which NIR’s application was to be considered, including instructions for participation by Zoom. At the HDC public hearing on September 9, 2021, no abutters raised any objection to NIR’s application, which was unanimously approved by the HDC on September 14, 2021.

On October 15, 2021, following the HDC’s approval, NIR applied to the Nantucket Building Department for a building permit to “Remove existing equipment, interior only, remove existing drywall, [and] remove walls per attached plan.” The plans submitted with the application for a building permit also clearly indicated that a portion of the Building would be used as a sit-down dining area. Building Commissioner Murphy approved NIR’s application and issued the requested building permit (No. 2021-10-0184) on October 28, 2021. A true and accurate copy of the October 28, 2021 building permit is attached hereto as **Exhibit 1**. Consistent with § 139-26(G) of the Bylaw, this permit was posted at the Premises and open to public inspection.

As the Premises are located within a coastal flood plain and adjacent to Nantucket Harbor, NIR also prepared and filed a Notice of Intent (“NOI”) with the Nantucket Conservation Commission on November 4, 2021, seeking an Order of Conditions to repair and renovate the Building, upgrade the kitchen and food storage facilities, and make the Premises handicap accessible. The NOI also made clear that NIR was not proposing to expand the existing footprint of the Building. The Petitioners received notice of the filing of the NOI by certified mail, return receipt requested, on or about November 19, 2021.

At the public hearing before the Conservation Commission regarding the NOI on December 16, 2021, one of the members of the Conservation Commission noted that she believed the Building required repairs to its foundation. A representative of NIR informed the Commission that it was doing exploratory work to determine the extent of any repairs to the foundation and, in response to a question from another Commission member, expressly stated that the Premises “will be a fish market and restaurant.” This statement is recorded in the meeting minutes of the December 16, 2021 hearing before the Conservation Commission. As with the public hearing before the HDC on September 14, 2021, no abutters raised any objection to the NOI and scope of renovation work described therein. One day after the hearing, on December 17, 2021, the Commission approved the NOI and issued an Order of Conditions (SE48-3486).

To address the concerns regarding the foundation of the Building, NIR applied for and received from the Building Department a building permit (No. 2021-12-0196) to replace the existing foundation. A true and accurate copy of this building permit dated December 14, 2021 is attached hereto as **Exhibit 2**. The work to renovate the Building commenced shortly thereafter in December, 2021. During the course of this work, NIR and SWFM became aware that more extensive repairs to the foundation were necessary, and NIR promptly notified the Conservation

Commission on April 12, 2022 that, pursuant to geotechnical reports it received and consistent with building permit No. 2021-12-0196, it intended to replace the existing foundation. However, NIR reiterated that this foundation work would not impact any resource areas, would occur within the Premises' existing footprint, and would be completed in accordance with issued Order of Conditions SE48-3486.

In conjunction with the approvals obtained from the Nantucket Conservation Commission and Building Department, NIR returned to the HDC between November 2021 and January 2022 to amend its previously approved Certificate of Appropriateness and submitted amended plans for approval. These amended plans, again, informed the HDC that the project involved the renovation of the Building and clearly identified a section of the Premises to be used for "Dining." The HDC approved NIR's amended application on January 27, 2022, and issued another Certificate of Appropriateness (No. 2021-11-5041).

Nearly a year later, NIR applied for a third building permit to further renovate the Building in accordance with the plans that the Conservation Commission and the HDC previously vetted and approved. The Building Department approved NIR's application and Commissioner Murphy issued the Building Permit on January 20, 2023. A true and accurate copy of the Building Permit is attached hereto as **Exhibit 3**. The work under the Building Permit commenced shortly thereafter.

On February 16, 2023, SWFM submitted an application for a "New Liquor, Common Victualler and Entertainment License," which provided another description of its intended use of the Premises as a fish market and restaurant with take-out service and in-person dining offering alcoholic beverages and other entertainment. Notice of the public hearing on March 15, 2023 on SWFM's application was provided to Petitioners pursuant to G.L. c. 138, § 15A. SWFM's liquor

license application was approved by the Nantucket Select Board following the public hearing on March 15, 2023. The Massachusetts Alcohol Control Commission subsequently approved SWFM's application for a new liquor license on April 15, 2023.¹

C. Petitioners Belatedly Contest the Renovation Project

On March 9, 2023, counsel for ONWC sent a letter to Commissioner Murphy claiming that the renovation project should not move forward because NIR and SWFM had allegedly failed to obtain a MCD Special Permit. In support of this position, ONWC referenced approvals NIR previously received, namely the HDC-approved Certificate of Appropriateness dated January 27, 2022, and SWFM's liquor license application, which described the Premises intended use as a sit-down and take-out restaurant. ONWC's March 9 letter also appeared to constitute an informal zoning enforcement request concerning building permit No. 2021-10-0184 (issued nearly seventeen months prior), as ONWC claimed that the work conducted at the Premises to-date appeared to have exceeded the scope of that permit. However, at no point prior to this date had Petitioners contested any of NIR's applications to renovate the Building, which consistently described the project as a renovation of the Building, and included plans depicting a restaurant and identifying a portion of the Building to be used as a "Dining" area.

Counsel for the Petitioners subsequently appeared at the March 15, 2023 Nantucket Select Board hearing to publicly oppose SWFM's liquor license application. ONWC's opposition to the project, as well as similar opposition from counsel for Mr. Johnson, marked the first time that Petitioners contested the project even though they had been on notice of it since August of 2021

¹ NIR also submitted an amended application to the HDC for a Certificate of Appropriateness (No. 2023-03-8063) on March 7, 2023 to perform "infill at bulkhead railing" work. The HDC held a public hearing on this application on March 21, 2023, and approved the application.

(when NIR first presented its architectural plans to the HDC), and construction work at the Premises had commenced in December, 2021.

On March 21, 2023, counsel for ONWC sent a formal zoning enforcement request to Commissioner Murphy pursuant to § 139-25 of the Bylaw and requested that the Building Permit be revoked because NIR had allegedly failed to obtain an MCD Special Permit. In this March 21 request, ONWC claimed that the existence of the Building Permit had only surfaced the prior week in connection with the March 15, 2023 Select Board meeting. On March 31, 2023, Commissioner Murphy denied the March 21, 2023 zoning enforcement request, stating that: “in my opinion, the building permit was properly issued.” Following receipt of Commissioner Murphy’s denial, counsel for Petitioners submitted their purported appeal to the ZBA.

ARGUMENT

I. Petitioners’ Appeal is Time-Barred.

In their application to the ZBA, Petitioners purport to appeal the Building Commissioner’s March 31, 2023 decision refusing to grant ONWC’s March 21, 2023 request to revoke the Building Permit, which was issued to NIR on January 20, 2023. It is undisputed, however, that NIR’s plans to renovate the Building in order to operate a restaurant with in-person dining and take-out service have been the subject of multiple public hearings and meetings before the HDC and Conservation Commission since August, 2021, and that these public hearings were necessary preconditions to the grant of the Building Permit. It is also undisputed that Petitioners received written notice of the public hearings before the HDC and the Conservation Commission but did not appear and raise any objections to NIR’s proposed plans to renovate the Building. Despite being on notice of the proposed renovation project since August, 2021, Petitioners did not appeal either of the two prior building permits issued to NIR in connection with the renovation of the Building within 30 days

after they were issued on October 28, 2021 and December 14, 2021, respectively, and did not purport to appeal the Building Permit until 60 days after it was issued on January 20, 2023. As construction work under these permits has been ongoing since December, 2021 and the Petitioners had actual and constructive notice that this work was being undertaken in order to operate a sit-down restaurant at the Premises, it is settled that the three building permits all became final and unappealable 30 days after they were issued. Accordingly, Petitioners' attempt to bring an enforcement action to revoke the Building Permit well after the 30-day appeal period expired is clearly untimely and the ZBA lacks jurisdiction to hear their appeal and grant the relief they request.

The Supreme Judicial Court has expressly recognized any "person aggrieved"² by a decision of a building inspector to issue a building permit must appeal the decision within 30 days of the date the building permit is issued under G.L. c. 40A, § 15 if that party has adequate notice the permit has issued. *See Connors v. Annino*, 460 Mass. 790, 796 (2011) ("Where the 'decision' of the building commissioner is the issuance of a building permit, it is reasonable and consistent with the statutory scheme to require the aggrieved party to comply with the route prescribed in [G.L. c. 40A] §§ 8 and 15..."); *see also Gallivan v. Board of Appeals of Wellesley*, 71 Mass. App. Ct. 850, 855-57 (2008). The 30-day statutory deadline to appeal the issuance of a building permit in G.L. c. 40A, § 15 is "both strictly enforced and a jurisdictional prerequisite to the board's jurisdiction to hear an appeal." *McIntyre v. Zoning Board of Appeals of Braintree*, 94 Mass. App. Ct. 204, 207 (2018) (holding that purported appeal to zoning board of appeals filed by abutter 45 days after building permit issued was untimely where abutter had constructive notice of issuance

² NIR notes that Petitioners nowhere in their application substantiate their claim that they are persons aggrieved by the issuance of the Building Permit, which is a necessary requirement to maintain an appeal to the ZBA. *See* G.L. c. 40A, § 8; Bylaw §§ 139-29C(3) and 139-31A(1); *see also 81 Spooner Road, LLC v. Zoning Board of Appeals of Brookline*, 461 Mass. 692, 700 n. 12 (2012).

of permit because construction had commenced). In these circumstances, a party may not bypass an appeal of the building permit by attempting after the 30-day appeal period has expired to bring an enforcement action under G.L. c. 40A, §§ 7-8 requesting that the permit be revoked. *Connors*, 460 Mass. at 796.

The notice sufficient to trigger the obligation to appeal a building permit within 30 days after it has issued may be “actual or constructive.” *Richardson v. Bd. of Appeals of Chilmark*, 81 Mass. App. Ct. 912, 913 (2012); *O’Brien v. McLeod*, No. 21 MISC 000603 (HPS), 2022 WL 14459661, at *12 (Mass. Land Ct. Oct. 25, 2022) (quoting *Richardson*). Sufficient or adequate notice does not require actual, explicit knowledge of zoning irregularities. *DeWolf v. Apovian*, No. 09 MISC 415664 (HMG), 2013 WL 139343, at *6 (Mass. Land Ct. Jan. 10, 2013) (citing *Gallivan*, 71 Mass. App. Ct. at 859). “A party has constructive notice when the evidence is sufficient to place on [that party] a duty of inquiry regarding the building permit’s issuance.” *O’Brien*, 2022 WL 14459661, at *12 (quoting *Richardson*, 81 Mass. App. Ct. at 913). “Observable activity, such as demolition and/or construction,” has been found to be sufficient to constitute constructive notice of the issuance of a building permit. *DeWolf*, 2013 WL 139343, at *6. Knowledge that a party has filed applications that are prerequisites to obtaining a building permit has also been held to constitute constructive notice sufficient to trigger that party’s obligation to make inquiry and monitor whether a building permit has been issued. *See Allison v. Board of Appeals of Falmouth*, 90 Mass. App. Ct. 1110, 2016 WL 6093513, at *2-*3 (Rule 1:28 Memo and Order, Oct. 18, 2016) (holding that condominium owner who received notice in October 2012 that neighboring property owner was seeking an Order of Conditions to renovate their property had constructive notice of the subsequent issuance of a building permit in March 2013, and that their seasonal occupation of their unit did not excuse them from making reasonable inquiries as to

whether a building permit had been issued); *Tessler v. Frattaroli*, No. 17 MISC 000091 (RBF), 2022 WL 2180167, at *11 (Land Ct. Jun. 16, 2022) (party’s knowledge that an application for a building permit had been filed was sufficient to constitute constructive notice and trigger their obligation to make inquiry and monitor whether a building permit was subsequently issued).

Based upon this settled law, it is clear that Petitioners had adequate notice of the proposed project to renovate the Building for use as a restaurant in 2021, which was sufficient to trigger their duty to inquire about the scope of work described in the proposed plans and other publicly available documents, and monitor whether any building permits had been issued to NIR in connection with the renovation project. Like the abutting seasonal condominium owner in *Allison*, Petitioners received notice of NIR’s application for a Certificate of Appropriateness from the HDC to renovate the Building on August 16, 2021. The plans and other public documents available for inspection in connection with this application clearly indicated that the proposed renovation of the Building was being undertaken to prepare it for use as a restaurant with a sit-down dining area. Petitioners were also notified on November 19, 2021 that NIR had filed an application for an Order of Conditions from the Conservation Commission to renovate the Building. The minutes of the subsequent public hearing before the Conservation Commission on December 19, 2021 clearly indicated that the purpose of the proposed renovation work was to operate a “fish market and restaurant” at the Premises. This statement in the publicly available meeting minutes could have been reviewed by Petitioners at any time following the hearing. SWFM’s intention to open and operate a restaurant at the Premises with seating capacity for approximately 60 people inside and outside on the deck was also reported in a published news story in the Nantucket Magazine on December 11, 2021. Finally, Petitioners knew or should have known that the work to renovate the Building had commenced in December 2021. Had they made inquiry at that time, they could have

clearly reviewed the plans submitted with the building permit applications, which also indicated that the purpose of the renovation work was to prepare the Building for use as a restaurant offering in-person dining. Under these circumstances, Petitioners clearly had adequate notice of the intention to renovate the Building for use as a restaurant offering in-person dining in 2021, which was sufficient to trigger their obligation to make inquiry regarding the building permits issued to NIR at that time in order to renovate the Building for use as a restaurant.

ONWC's March 9, 2023 letter to the Building Commissioner clearly demonstrates if they had previously reviewed the plans and other public documents relating to the various applications filed by NIR and SWFM, they could have readily determined that SWFM was proposing to operate a small restaurant at the Premises. By mid-February 2023, they also had constructive knowledge of the issuance of building permits by virtue of the fact that construction work had commenced more than a year earlier. Nonetheless, they did not appeal the Building Permit, or the two earlier building permits issued to NIR within 30 days after they were issued. Under these circumstances, Petitioners cannot possibly satisfy their burden of establishing that they did not have actual or constructive notice of the issuance of these permits. *DeWolf*, 2013 WL 139343, at *6. Accordingly, their purported appeal must be dismissed for lack of jurisdiction. *Connors*, 460 Mass. at 797.

II. The Renovation of the Building Does Not Require an MCD Special Permit.

In addition to being untimely, Petitioners' appeal fails on the merits. Contrary to their contention, the plain and unambiguous language of § 139-11 of the Bylaw does not require NIR to obtain a "Major Commercial Development" or MCD Special Permit from the Nantucket Planning Board to complete the work necessary to renovate the Building for use as a fish market and restaurant offering take-out service and in-person dining.

Under the plain language of § 139-11(B), an MCD Special Permit is only required for a commercial structure or use, or a group of commercial structures or uses, that is **proposed to be constructed** on a single lot or tract of land, or on contiguous tracts held in common ownership, for one of the uses specified in subsections 1-8. As the applications filed by NIR and SWFM all clearly state, they are merely renovating the existing Building; they are not proposing to construct any new structure. As such, the initial MCD threshold, which is limited to the new structures “proposed to be constructed,” is not triggered in this case. Moreover, subsection (5) of § 139-11(B) only requires an MCD with respect to a restaurant with a combined rated legal occupancy of 100 or more people. Petitioners have utterly failed to establish that the restaurant SWFM intends to operate, in which seating will be limited to 62 persons, will exceed the 100-person occupancy threshold.

As their submissions make clear, Petitioner’s real objection is not to the construction of a new structure, but to the change of use of the existing Building for in-person dining, which is addressed in § 139-11(C) of the Bylaw rather than in § 139-11(B). The plain language of § 139-11(C) makes clear, however, that it only applies to the alteration or expansion of preexisting nonconforming uses that meet or exceed the criteria in § 139-11(B). As the proposed use of the Building as a small restaurant is allowed as-of-right in the CDT zoning district in which the Premises are located, it is not a preexisting nonconforming use subject to § 139-11(C). Accordingly, the proposed use of the Premises for in-person and take-out dining does not trigger MCD Special Permit requirements relating to changes in nonconforming uses within existing structures. Nothing in § 139-11 remotely suggests that it is intended to superimpose a special permit requirement upon uses allowed as-of-right in existing buildings. Reading the Bylaw as Petitioners contend, which would require the Board to conclude that a small fish market and clam

shack is a “Major Commercial Development,” would effectively conflict with the use table in §139-7A of the Bylaw and deprive NIR of its clear legal rights with respect to the use of Premises.

CONCLUSION

For the foregoing reasons, NIR respectfully requests that the ZBA deny the relief requested by the Petitioners.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Richard P. Beaudette", is written in a cursive style.

Richard P. Beaudette

NANTUCKET
COTTAGE
HOSPITAL

File No. 10-23

16 VESPER LANE

VARIANCE

BEAUDETTE AND SWAIN
PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW
35 OLD SOUTH ROAD, SUITE D
P.O. BOX 2049
NANTUCKET, MASSACHUSETTS 02584

RICHARD P. BEAUDETTE
BRYAN J. SWAIN

RECEIVED
TOWN CLERK
2023 MAY 12 PM 12:58

PHONE: (508) 228-4455
FAX: (508) 228-3070
WWW.NANTUCKETLAWFIRM.COM

OF COUNSEL
KEVIN F. DALE
WILLIAM F. HUNTER

Friday, May 12, 2023

HAND DELIVERY

Nancy Holmes, Nantucket Town and County Clerk
16 Broad Street
Nantucket, MA 02554

Re: Zoning Board of Appeals Application
16 Vesper Lane, Nantucket, MA 02554

Dear Nancy:

I represent the Applicant in the above-captioned matter. You are hereby notified that my client has submitted the enclosed Application to the Nantucket Zoning Board of Appeals related to the real property it owns at 16 Vesper Lane, Nantucket Town and County, Commonwealth of Massachusetts.

Please let me know if you have any questions or need any additional information.

Sincerely



Richard P. Beaudette, Esq.

Enc.

cc: Nantucket Cottage Hospital

BEAUDETTE AND SWAIN
PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW
35 OLD SOUTH ROAD, SUITE D
P.O. BOX 2049
NANTUCKET, MASSACHUSETTS 02584

RICHARD P. BEAUDETTE
BRYAN J. SWAIN

PHONE: (508) 228-4455
FAX: (508) 228-3070
WWW.NANTUCKETLAWFIRM.COM

OF COUNSEL
KEVIN F. DALE
WILLIAM F. HUNTER

Friday, May 12, 2023

EMAIL AND HAND DELIVERY

Leslie Woodson Snell
Deputy Director of Planning
Zoning Administrator
2 Fairgrounds Road
Nantucket, MA 02554

Re: Zoning Board of Appeals Application
16 Vesper Lane, Nantucket, MA 02554

Dear Leslie:

My office represents Nantucket Cottage Hospital in the above-referenced matter.

Enclosed, please find a Zoning Board of Appeals application, including the following:

1. Completed application page, with an addendum;
2. The locus plan from the Nantucket Tax Assessor's map book;
3. Surveyed proposed conditions plan;
4. Historical plans of the site;
5. A certified abutters list (including the original stamped assessor's copy);
6. Two (2) separate sets of addressed mailing labels based on the abutter's list provided by the Tax Assessor's office.
7. A check for \$450 made payable to the Town of Nantucket.

Please place this matter on the Zoning Board of Appeals June 8, 2023 agenda. Please let me know if you have any questions. I am available by phone at 508-228-4455 or by email at:

rick@nantucketlawfirm.com.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rick Beaudette", with a stylized flourish at the end.

Richard P. Beaudette, Esq.

Enc.

cc: Nantucket Cottage Hospital



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

A P P L I C A T I O N

Fee: \$450.00

File No. 10-23

Owner's name(s): Nantucket Cottage Hospital

Mailing address: 57 Prospect Street, Nantucket MA 02554

Phone Number: 508-825-8100 E-Mail: Alee109@MGB.org

Applicant's name(s): Amy Lee

Mailing Address: 57 Prospect Street, Nantucket MA 02554

Phone Number: 508-825-8100 E-Mail: Alee109@MGB.org

Locus Address: 16 Vesper Lane Assessor's Map/Parcel: 3472

Land Court Plan/Plan Book & Page/Plan File No.: N/A

Deed Reference/Certificate of Title: 184/112 Zoning District CN

Uses on Lot- Commercial: None^X Yes (describe) _____

Residential: Number of dwellings 0 Duplex 0 Apartments 0

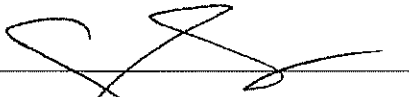
Date of Structure(s): all pre-date 7/72 _____ or N/A

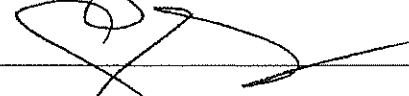
Building Permit Numbers: _____

Previous Zoning Board Application Numbers: _____

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

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: X  Owner*

SIGNATURE: X  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: __/__/__

APPENDIX A

Variance Narrative

Nantucket Cottage Hospital (the “Hospital” or the “Petitioner”) has been working with the Town of Nantucket Affordable Housing Trust Fund (the “Trust”) to cooperatively address the housing needs on Nantucket.

As a result of these efforts, the parties have entered into a Memorandum of Understanding whereby they will exchange parcels of land to address their respective housing needs. Specifically, the Trust has agreed to convey its property at 18 Vesper Lane, shown as “Trust Parcel” on the Subdivision Plan (defined herein), that formerly provided housing for those working at the UMass Field Station (the “Trust Property”) to the Hospital, which can be repurposed by the Hospital to provide critical housing for employees. In exchange for the Trust Property, the Hospital has agreed to convey a portion of its lot at 16 Vesper Lane (the “Property”) to the Trust so that the Trust can ultimately develop affordable housing. This is an opportunity for the Hospital to create employee housing units relatively quickly that will help address their housing needs in the short-term and for the Trust to acquire a development parcel for long-term development.

The Property is located within the Commercial-Neighborhood zoning district and the Nantucket Cottage Hospital Overlay district. As shown on the enclosed plan titled Subdivision Plan Option 2, prepared by RJO’Connell & Associates, Inc. and dated May 4, 2023 (the “Subdivision Plan”), the Property is a rear lot with access provided via an easement from Vesper Lane and it is large enough to be divided into four lots, one lot for the existing building owned by the Hospital and three lots that can be conveyed to the Trust. The portion of the Property that would be conveyed to the Trust from the Hospital meets the lot area requirements of the Nantucket Zoning Bylaw (the “Zoning Bylaw”) and has access via an easement from Vesper Lane. However, as an old rear lot, the Property does not have legal frontage. Accordingly, the Petitioner is submitting this application requesting a variance from Section 139-16 of the Zoning Bylaw to allow for the creation of “Proposed Lot 3A,” “Proposed Lot 3B,” and “Proposed Lot 3C” as shown on the Subdivision Plan (the “Proposed Lots”).

For the reasons set forth below, the Petitioner respectfully requests that the Zoning Board of Appeals grant the requested relief.

A) A literal enforcement of the provisions of the Zoning Bylaw would involve a substantial hardship, financial or otherwise, to the petitioner or appellant for the following reasons:

A literal enforcement of the provisions of the Zoning Bylaw would involve a substantial hardship to the Petitioner. The Proposed Lots are rear lots and will obtain pedestrian and vehicular access to Vesper Lane through an easement granted over private property and onto an existing private way known as Gouin Village. There is no way for the Proposed Lots to independently acquire frontage because of the private ownership of the properties located between the Property and Vesper Lane. Absent relief granted from this Board, the Hospital would not have the opportunity to acquire the Trust Property because it could not offer a portion

of the Property to the Trust to provide crucially-needed affordable housing for the residents of Nantucket through the development of affordable housing. Accordingly, literal enforcement of this Ordinance would involve a substantial hardship to the Petitioner without relief from the requirement that the Property have 50 feet of frontage.

B) The hardship is owing to the following circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located for the following reasons:

The Property is uniquely situated as a land-locked parcel surrounded by several privately-owned parcels. As a result, the Property must be located along a private way causing lack of frontage unique to the land. The existing lack of frontage due to the location of the Property is a hardship particular to Petitioner, which can be ameliorated by precluding the need for the Proposed Lots to have 50 feet of frontage.

C) Desirable relief may be granted without substantial detriment to the public good for the following reasons:

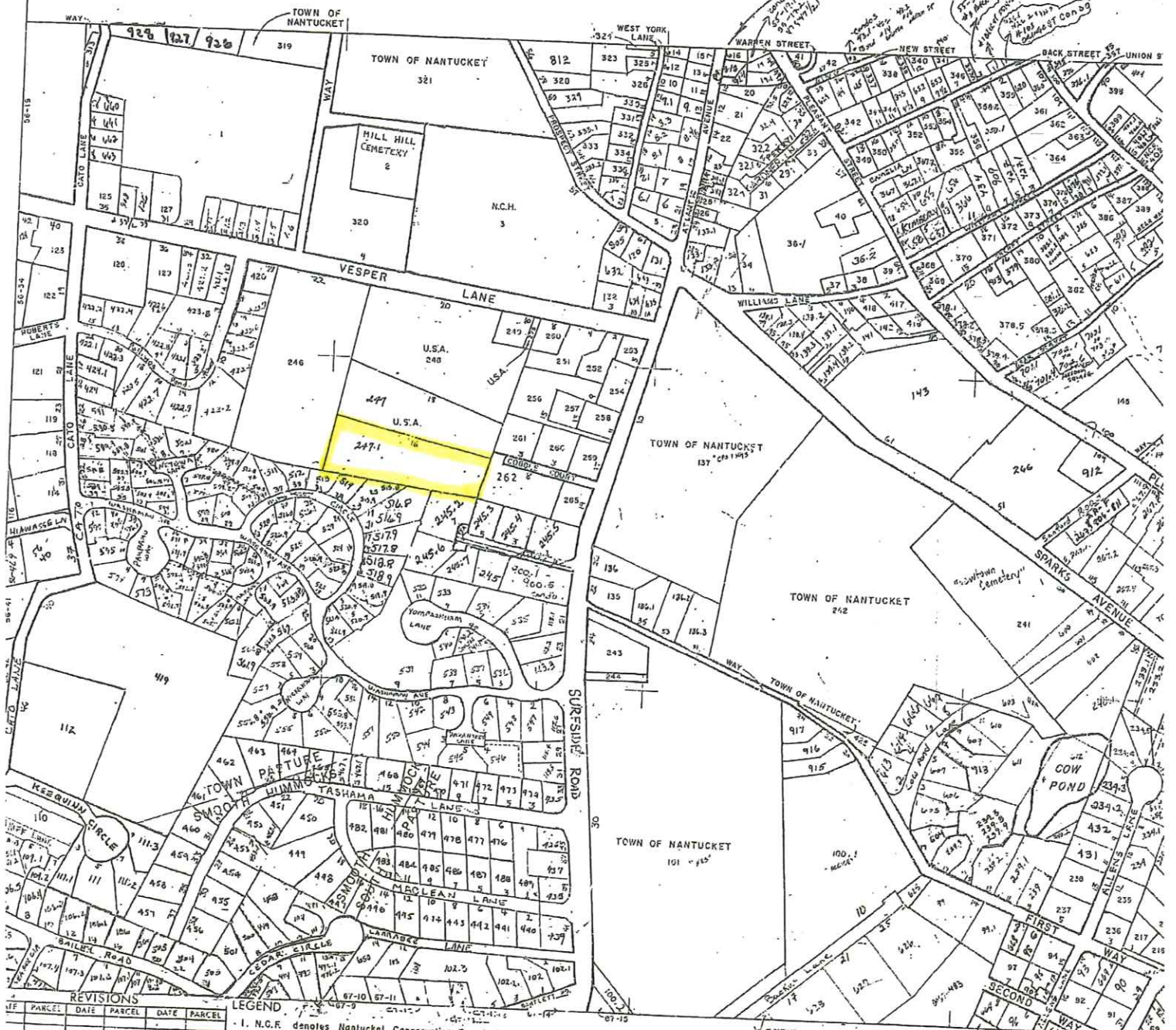
The requested relief can be granted without detriment to the public good. As detailed above, the Trusts intend to provide crucially-needed affordable housing for the residents of Nantucket through the development of affordable housing. Additionally, the Hospital is able to provide critical housing employee housing by exchanging a portion of the Property for the Trust Property. The Property has been identified as a promising location to provide these public benefits and the requested relief will allow the Property to be developed for this important purpose. Therefore, granting relief from the requirement for the Proposed Lots to have frontage along a public way will not be a detriment to the public good. In fact, granting the relief benefits the residents of Nantucket by creating affordable housing opportunities and much needed employee housing for Nantucket's only hospital.

D) Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw for the following reasons:

The relief requested can be granted without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw. According to Section 139-1, the Zoning Bylaw is intended to "promote the health, safety, convenience, morals and general welfare of its inhabitants...." The relief requested herein allows for the provision of employee and affordable housing, which is consistent with the Town's morals and interest in providing housing for the Hospital's employees and affordable housing for the residents will enhance the general welfare of its inhabitants. Because of the Property's access to Vesper Lane over private property and a private way, its lack of frontage will not impair the health, safety, or convenience of residents or other members of the public. Accordingly, the relief requested can be granted without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

For the reasons set forth above, the Petitioner respectfully requests that the Zoning Board of Appeals grant the above-described variance and such other relief as the Board deems proper.

Limit of 200 Sc
See 50 Scale Mapping - Sheet No



REVISIONS

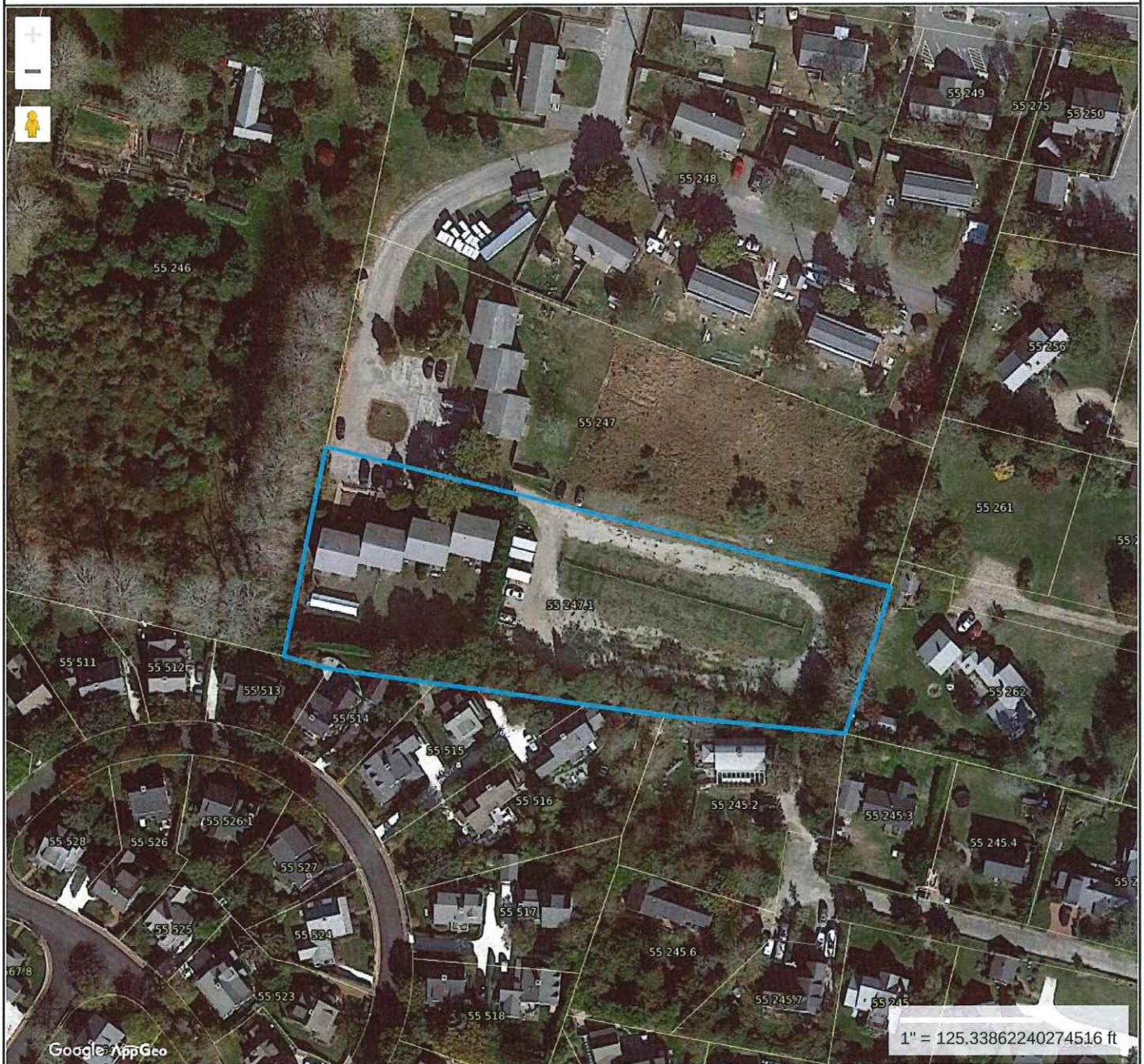
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- LEGEND
1. N.C.F. denotes Nantucket Conservation Foundation, Inc.
 2. N.C.H. denotes Nantucket Cottage Hospital
 3. U.S.A. denotes United States of America
 4. (N.C.) denotes not constructed

The Town and County of NANTUCKET Massachusetts

Photogrammetry by
JOHN WOOD & SONS, INC.
ROCKPORT, MASS.

INFORMATION SHOWN HEREON WAS
MAILED FROM AERIAL PHOTOGRAPHS, DEEDS
AND PLANS OF RECORD AND IS NOT TO BE
CONSTRUED AS HAVING SUFFICIENT ACCURACY
FOR CONVEYANCE



Property Information

Property ID 55 247.1
 Location 16 VESPER LN
 Owner NANTUCKET COTTAGE HOSPITAL



**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 11/14/2022
 Data updated Jan. 2021

Print map scale is approximate.
 Critical layout or measurement
 activities should not be done using
 this resource.

NEW MATERIALS SUBMITTED

Pg 73-77

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

Assessor's Map 55, Parcel 247.1
16 Vesper Lane, Nantucket, MA 02554

DEED: Book 184, Page 112
Commercial-Neighborhood (CN)
Zoning District

DECISION:

1. At a public hearing of the Nantucket Zoning Board of Appeals, on Thursday, July 13, 2023, at 1:00 P.M., at Four Fairgrounds Road, Nantucket, Massachusetts, the Board made the following decision on the application of **Nantucket Cottage Hospital** (the "Applicant"), of 57 Prospect Street, Nantucket, Massachusetts, 02554, in Board of Appeals File No. **10-23**.

2. The Applicant is the owner of the real property located at 16 Vesper Lane, Nantucket Town and County, Commonwealth of Massachusetts, an existing oversized landlocked tract of land, which is pre-existing, non-conforming as to frontage, shown on Nantucket Tax Assessor's Map 55 as Parcel 247.1, and is further identified as Lot 1 on plan of land recorded in Plan Book 21, Page 61, recorded with the Nantucket County Registry of Deeds (the "Premises"). The Premises is accessed by an easement running from Vesper Lane, southerly, across 20 Vesper Lane, and 18 Vesper Lane, Nantucket Town and County, Commonwealth of Massachusetts, through the development know as Gouin Village (the "Gouin Village Easement").

3. The Premises is surrounded by several privately-owned parcels and abuts 18 Vesper Lane, Nantucket Town and County, Commonwealth of Massachusetts ("18 Vesper Lane"), owned by the Town of Nantucket's Affordable Housing Trust Fund (the "Trust"), which is also a

landlocked and pre-existing non-confirming parcel of land, without legal frontage, accessed by the Gouin Village Easement.

4. The Applicant and the Trust are collectively working to address the housing needs on Nantucket and their respective organizations. As a result of these efforts, the entities have cooperatively agreed to swap portions of their respective properties with each other in order to create additional housing for the employees of Nantucket's only hospital, and also to create additional affordable housing opportunities for the Trust. The aims of the Applicant and the Trust are consistent with Nantucket's morals and will enhance the general welfare of the inhabitants of Nantucket without impairing the health, safety, or convenience of residents or other members of the public. Absent relief granted from the Board, the Applicant would not have the opportunity to acquire 18 Vesper Lane because it could not offer a portion of the Premises to the Trust.

5. In relation thereto, the Applicant desires to divide the Premises, in accordance with the Plan attached hereto as Exhibit A, into four (4) new lots that will continue to remain landlocked, without any frontage. The Applicant is seeking Variance relief to allow the four (4) newly created lots to exist without the required Frontage under the Commercial Neighborhood (CN) zoning district.

6. The proposed division of the Premises will create three (3) vacant lots of land and one improved parcel of land containing the structure that currently exists on the Premises. After the Premises is divided into four (4) lots, the Applicant has agreed to convey the three (3) newly created vacant parcels of land to the Trust, in exchange for the Trust conveying 18 Vesper Lane to it. After the land-swap has been completed, the Trust will own the three (3) newly created

vacant parcels of land, and the Applicant will own the remaining improved lot, and the entirety of 18 Vesper Lane.

7. All lots will continue to be accessed by the Gouin Village Easement. There is no way for the Premises to independently acquire frontage because of the private ownership of the properties located between the Premises and Vesper Lane.

8. The three (3) newly created vacant parcels of land will access their lots via the Gouin Village Easement and also via a newly created shared driveway easement, running along the northerly boundary line of such lots (the "Access Easement").

9. Our decision is based upon the application submitted, its accompanying and supplemental materials, representations, and testimony received at our public hearings, and the staff reports associated therewith.

10. Therefore, the Board finds that owing to the circumstances relating to the soil conditions, shape, or topography of the Premises, but not generally affecting the zoning district in which it is located, a literal enforcement of the respective and applicable provisions of the Nantucket Bylaw, 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 said bylaw.

11. Accordingly, upon a motion duly made and seconded, the Board voted _____ to _____, to APPROVE the requested relief by VARIANCE under Nantucket Zoning By-law Section 139-32, to allow the Applicant to divide the Premises in accordance with the Plan, attached hereto as Exhibit A, subject to the following conditions:

A. The Lots shall not be further subdivided without relief from this Board;

- B. The Access Easement shall be kept in reasonably good condition and repair, including but not limited to: keeping the area free of debris and vehicles, plowing the area whenever snow accumulates and keeping the Access Easement suitable for emergency vehicles to access the respective lots.
- C. The costs associated with the maintenance and repairs to the Access Easement shall be equally shared between the owners of the three (3) vacant lots referenced herein above.
- D. The Town of Nantucket, acting through the Zoning Board of Appeals or Zoning Enforcement Officer, shall have the right to enforce conditions (B) and (C) hereinabove.
- E. The shared driveway within the Access Easement shall be constructed of impervious materials.
- F. The three (3) vacant lots shall be conveyed to the Trust.

SIGNATURE PAGE TO FOLLOW

SIGNATURE PAGE

Assessor's Map 55, Parcel 247.1
16 Vesper Lane, Nantucket, MA 02554

Deed: Book 184, Page 112
Commercial-Neighborhood (CN)
Zoning District

Dated: _____, 2023

Susan McCarthy

Michael O'Mara

John Brescher

Elisa H. Allen

Jim Mondani

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss.

On the _____ day of _____, 2023, 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 he signed the foregoing instrument voluntarily for the purposes therein expressed.

Official Signature and Seal of Notary Public
My commission expires:

Town of Nantucket

Zoning Board of Appeals

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

PROPERTY OWNER.....NANTUCKET COTTAGE HOSPITAL
C/O Beaudette and Swain, LLC
MAILING ADDRESS.....35 Old South Road, STE D, Nantucket, MA 02554
PROPERTY LOCATION.....16 VESPER LANE
ASSESSOR MAP/PARCEL.....55 / 247.1
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 11 and Zoning Code Chapter 40A, Section 139-29B (2).

May 11, 2023

DATE

Mary L.
Haley

Digitally signed
by Mary L. Haley
Date: 2023.05.11
14:53:24 -04'00'

ASSESSOR'S OFFICE
TOWN OF NANTUCKET

Abutters Listing

MBLU	Lot	Lot/Cut	Name Line 1	Name Line 2	Address Line 1	City	State	Zip	Location
55	245		4 ANNA DRIVE LLC	C/O BEAUDETTE AND SWAIN LLC	PO BOX 2049	NANTUCKET	MA	02584	4 ANNA DR
55	245	2	SOUTHEY DANIEL O & CURRIE MICHELE L		PO BOX 825	NANTUCKET	MA	02554	7 ANNA DR
55	245	3	MURRAY ROBERT DEAN		PO BOX 167	BOKEELIA	FL	33922	5 ANNA DR
55	245	4	BEAUDETTE RICHARD P & RICHELLE L		3 ANNA DR	NANTUCKET	MA	02554	3 ANNA DR
55	245	5	SEO REAL ESTATE LLC		302 BROADWAY RT 138 STE 6	RAYNHAM	MA	02767	19- SURFSIDE RD
55	245	6	8 ANNA DRIVE LLC		307 POLPIS RD	NANTUCKET	MA	02554	8 ANNA DR
55	245	7	ALBERTSON PHILIP K JR		6 ANNA DR	NANTUCKET	MA	02554	6 ANNA DR
55	247		TOWN OF NANTUCKET		16 BROAD STREET	NANTUCKET	MA	02554	18 VESPER LN
55	248		U S OF AMERICA	C/O U S COAST GUARD	2 EASTON ST	NANTUCKET	MA	02554	20 VESPER LN
55	256		RYDER RICHARD C & NANCY G TRS	RYDER FAMILY NOMINEE TRUST	15 SURFSIDE RD	NANTUCKET	MA	02554	15 SURFSIDE RD
55	257		RYDER RICHARD C & KIMBERLEY A TRST		15 SURFSIDE RD	NANTUCKET	MA	02554	13 SURFSIDE RD
55	258		RYDER JANET R TRUSTEE	J RYDER NOMINEE TRUST	11 SURFSIDE ROAD	NANTUCKET	MA	02554	11 SURFSIDE RD
55	259		CRIB LLC		19 ARROWHEAD DRIVE	NANTUCKET	MA	02554	17 SURFSIDE RD
55	260		OTTISON KARL & SUSAN TRST	RANDOM WINDS REALTY TRUST	170 ORANGE ST	NANTUCKET	MA	02554	3 COBBLE CT
55	261		BRESCHER JESSIE M TR	FIVE COBBLE CT REALTY TRUST	37 CENTER STREET	NANTUCKET	MA	02554	5 COBBLE CT
55	262		MARKS SCOTT		PO BOX 863	NANTUCKET	MA	02554	8 COBBLE CT
55	265		AUSTIN SALLYANNE		19 SURFSIDE RD	NANTUCKET	MA	02554	19 SURFSIDE RD
55	509		NASHAKUISSET COOPERATIVE INC	FINN ROBERT A JR & EIDENT JENNIFER	25 FITCH WAY	PRINCETON	NJ	08540	45 AUTOPSCOT CI
55	510	8	NASHAKUISSET COOPERATIVE INC	C/O SEEMAN WILLIAM H & ELLEN V	8 DARROWS RIDGE RD	EAST LYME	CT	06333	43 AUTOPSCOT CI
55	511		NASHAKUISSET COOPERATIVE INC	MCDONOUGH THOMAS & KATHLEEN FUREY	2000 FERNDALE DR	WILMINGTON	DE	19810	37 AUTOPSCOT CI
55	512		NASHAKUISSET COOPERATIVE INC	C/O ALBERTSON KIMBERLY F ETAL	33 AUTOPSCOT CIR	NANTUCKET	MA	02554	33 AUTOPSCOT CI
55	513		NASHAKUISSET COOPERATIVE INC	C/O PICINICH JAMES K & ELENA F	800 WEST END AVE APT 7B	NEW YORK	NY	10025	31 AUTOPSCOT CI
55	514		NASHAKUISSET COOPERATIVE INC	C/O WARMS MARK E	100 S POINTE DR APT 1005	MIAMI BEACH	FL	33139	29 AUTOPSCOT CI
55	515	8	NASHAKUISSET COOPERATIVE INC	C/O UNDERWOOD SARA M TRST	21 DEERWOOD RD	WELLESLEY	MA	02481	25 AUTOPSCOT CI
55	516	8	NASHAKUISSET COOPERATIVE INC	C/O 19 AUTOPSCOT CIR LLC	7 LORENZO DR	SOUTHBOROUGH	MA	01772	19 AUTOPSCOT CI
55	517	8	NASHAKUISSET COOPERATIVE INC	BLOCK ELIZABETH W	4100 CATHEDRAL AVE NW #815	WASHINGTON	DC	20016	15 AUTOPSCOT CI
55	518	8	NASHAKUISSET COOPERATIVE INC	C/O LAFONTAINE PAMELA S	135 IMPERIAL AVE	WESTPORT	CT	06880	11 AUTOPSCOT CI
55	519	8	NASHAKUISSET COOPERATIVE INC	C/O ALLEN CRAIG M & NICOLE P	140 CULLODEN DRIVE	CANTON	MA	02021	7 AUTOPSCOT CI
55	520	8	NASHAKUISSET COOPERATIVE INC	C/O NADEL BENJAMIN & MCCORMICK M K	11 STANDFORD COURT	RHINEBECK	NY	12572	3 AUTOPSCOT CI
55	521	8	NASHAKUISSET COOPERATIVE INC	SILENT SEA LLC	76 YALE STREET	WINCHESTER	MA	01890	1 AUTOPSCOT CI
55	522		NASHAKUISSET COOPERATIVE INC	C/O LOHRMAN JOHN & NATALIE TRS	3401 TUTTLE RD SUITE 290 SHAKER HEIGHTS	OH	44122	15 WASHAMAN AV	
55	523	8	NASHAKUISSET COOPERATIVE INC	C/O MORAN MARC R & YUELING G	15 VALENTINE STREET UNIT 3	CAMBRIDGE	MA	02139	8 AUTOPSCOT CI
55	524		NASHAKUISSET COOPERATIVE INC	C/O REYES PROTACIO A & PHYLLIS	177 SOUTH AVE #1	NEW CANAAN	CT	06840	16 AUTOPSCOT CI
55	525		NASHAKUISSET COOPERATIVE INC	C/O MARASCO WILLIAM J	21 AARONS WAY	S YARMOUTH	MA	02673	19 WASHAMAN AV
55	526	1	NASHAKUISSET COOPERATIVE INC	GALLUP SAMANTHA & BARRY JR	235 TOKENEKE RD	DARIEN	CT	06820	32 AUTOPSCOT CI
55	526	8	NASHAKUISSET COOPERATIVE INC	C/O MACDONALD LESLIE W JR	PO BOX 2538	MERCER ISLAND	WA	98040	40 AUTOPSCOT CI
55	527		NASHAKUISSET COOPERATIVE INC	C/O TUCKER F MICHAEL TRST	115 HUNTERFIELD RD	NANTUCKET	MA	02584	24 AUTOPSCOT CI
55	528		NASHAKUISSET COOPERATIVE INC	STRAZZULA KATHLEEN J	82 CRESCENT AV	DELMAR	NY	12054	23 WASHAMAN AV
55	532		LAWS WHITNEY E & SCHMITT MAKENZIE A TRS	SCHMITT FAMILY IRREVOCABLE FAMILY TRUST	9 YOMPASHAM LANE	SCITUATE	MA	02066	11 YOMPASHAM LN
55	533					NANTUCKET	MA	02554	9 YOMPASHAM LN

55	534	CHADWICK HOWARD B JR	7 YOMPASHAM LN	NANTUCKET	MA	02554	7 YOMPASHAM LN
55	539	NASHAQUISSET COOPERATIVE INC	PO BOX 3067	NANTUCKET	MA	02584	9 WASHAMAN AV
55	578	NASHAQUISSET COOPERATIVE INC	128 BLEDDYN ROAD	ARDMORE	PA	19003	29 WASHAMAN AV
55	579	NASHAQUISSET COOPERATIVE INC	7 S E MARLIN AVENUE	KEY LARGO	FL	33037	2 NETOWA LN
55	579	NASHAQUISSET COOPERATIVE INC	7900 ARLINGTON CR #403	NAPLES	FL	34113	4 NETOWA LN
55	900	RYAN KEITH E TRST ET AL	30 WESTOVER RD	SLINGERLANDS	NY	12159	2B ANNA DR
55	900	RYAN DENIS C JR TRST ET AL	12 STONEHENGE LN	ALBANY	NY	12203	2C ANNA DR
55	900	MILLER BRADY & SUZANNE	8 RELAY CT	COS COB	CT	6807	2D ANNA DR
55	900	ROBINSON JULIAN JADE ET AL	61 OLD SOUTH RD #103	NANTUCKET	MA	02554	2E ANNA DR
55	900	MEACHAM JOHN E & HEATHER M TRUST	43 SAYLES ST	ALFRED	NY	14802	2A ANNA DR
Count:		49					

4 ANNA DRIVE LLC
C/O BEAUDETTE AND SWAIN LLC
PO BOX 2049
NANTUCKET, MA 02584

SOUTHEY DANIEL O & CURRIE MICHELE
L
PO BOX 825
NANTUCKET, MA 02554

MURRAY ROBERT DEAN
PO BOX 167
BOKEELIA, FL 33922

BEAUDETTE RICHARD P & RICHELLE L
3 ANNA DR
NANTUCKET, MA 02554

SEO REAL ESTATE LLC
302 BROADWAY RT 138 STE 6
RAYNHAM, MA 02767

8 ANNA DRIVE LLC
307 POLPIS RD
NANTUCKET, MA 02554

ALBERTSON PHILIP K JR
6 ANNA DR
NANTUCKET, MA 02554

TOWN OF NANTUCKET
16 BROAD STREET
NANTUCKET, MA 02554

U S OF AMERICA
C/O U S COAST GUARD
2 EASTON ST
NANTUCKET, MA 02554

RYDER RICHARD C & NANCY G TRS
RYDER FAMILY NOMINEE TRUST
15 SURFSIDE RD
NANTUCKET, MA 02554

RYDER RICHARD C & KIMBERLEY A TRST
15 SURFSIDE RD
NANTUCKET, MA 02554

RYDER JANET R TRUSTEE
J RYDER NOMINEE TRUST
11 SURFSIDE ROAD
NANTUCKET, MA 02554

CRIB LLC
19 ARROWHEAD DRIVE
NANTUCKET, MA 02554

OTTISON KARL & SUSAN TRST
RANDOM WINDS REALTY TRUST
170 ORANGE ST
NANTUCKET, MA 02554

BRESCHER JESSIE M TR
FIVE COBBLE CT REALTY TRUST
37 CENTER STREET
NANTUCKET, MA 02554

MARKS SCOTT
PO BOX 853
NANTUCKET, MA 02554

AUSTIN SALLYANNE
19 SURFSIDE RD
NANTUCKET, MA 02554

NASHAQUISSET COOPERATIVE INC
FINN ROBERT A JR & EIDENT JENNIFER
25 FITCH WAY
PRINCETON, NJ 08540

NASHAQUISSET COOPERATIVE INC
C/O SEEMAN WILLIAM H & ELLEN V
8 DARROWS RIDGE RD
EAST LYME, CT 06333

NASHAQUISSET COOPERATIVE INC
MCDONOUGH THOMAS & KATHLEEN
FUREY
2000 FERNDAL DR
WILMINGTON, DE 19810

NASHAQUISSET COOPERATIVE INC
C/O ALBERTSON KIMBERLY F ETAL
33 AUTOPSCOT CIR
NANTUCKET, MA 02554

NASHAQUISSET COOPERATIVE INC
C/O PICINICH JAMES K & ELENA F
800 WEST END AVE APT 7B
NEW YORK, NY 10025

NASHAQUISSET COOPERATIVE INC
C/O WARMS MARK E
100 S POINTE DR APT 1005
MIAMI BEACH, FL 33139

NASHAQUISSET COOPERATIVE INC
C/O UNDERWOOD SARA M TRST
21 DEERWOOD RD
WELLESLEY, MA 02481

NASHAQUISSET COOPERATIVE INC
C/O 19 AUTOPSCOT CIR LLC
7 LORENZO DR
SOUTHBOROUGH, MA 01772

NASHAQUISSET COOPERATIVE INC
BLOCK ELIZABETH W
4100 CATHEDRAL AVE NW #815
WASHINGTON, DC 20016

NASHAQUISSET COOPERATIVE INC
C/O LAFONTAINE PAMELA S
135 IMPERIAL AVE
WESTPORT, CT 06880

NASHAQUISSET COOPERATIVE INC
C/O ALLEN CRAIG M & NICOLE P
140 CULLODEN DRIVE
CANTON, MA 02021

NASHAQUISSET COOPERATIVE INC
C/O NADEL BENJAMIN & MCCORMICK M K
11 STANDFORD COURT
RHINEBECK, NY 12572

NASHAQUISSET COOPERATIVE INC
SILENT SEA LLC
76 YALE STREET
WINCHESTER, MA 01890

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C/O LOHRMAN JOHN & NATALIE TRS
3401 TUTTLE RD SUITE 290
SHAKER HEIGHTS, OH 44122

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C/O MORAN MARC R & YUELING G
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CAMBRIDGE, MA 02139

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C/O REYES PROTACIO A & PHYLLIS
177 SOUTH AVE #1
NEW CANAAN, CT 06840

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C/O MARASCO WILLIAM J
21 AARONS WAY
S YARMOUTH, MA 02673

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235 TOKENEKE RD
DARIEN, CT 06820

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BROOKE ALEXANDER L & JENNIFER A
MERCER ISLAND, WA 98040

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C/O MACDONALD LESLIE W JR
PO BOX 2538
NANTUCKET, MA 02584

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C/O TUCKER F MICHAEL TRST
115 HUNTERFIELD RD
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STRAZZULA KATHLEEN J
82 CRESCENT AV
SCITUATE, MA 02066

LAWS WHITNEY E & SCHMITT MAKENZIE A
TRS
SCHMITT FAMILY IRREVOCABLE FAMILY
TRUST
9 YOMPASHAM LANE
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CHADWICK HOWARD B JR
7 YOMPASHAM LN
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PO BOX 3067
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128 BLEDDYN ROAD
ARDMORE, PA 19003

NASHAQUISSET COOPERATIVE INC
GLEASON SUZANNE MARIE
7 S E MARLIN AVENUE
KEY LARGO, FL 33037

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RYAN KEITH E TRST ETAL
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30 WESTOVER RD
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43 SAYLES ST
ALFRED, NY 14802

NEW BUSINESS

PAUL P. & JEAN M.
MORAN

File No. 10-22

4 Washington Ave

SPECIAL PERMIT

Continued to August 10, 2023

End of Packet