

COMMONWEALTH OF MASSACHUSETTS
TOWN OF NANTUCKET

Map 67 Parcel 813

BUILDING DEPARTMENT

No. 655-07

Office of the Building Inspector

FEE \$ 581 ⁰⁰/_{xx}

June 29, 2007

BUILDING PERMIT

THIS PERMIT CERTIFIES THAT Beverly S. Wilkin HAS

PERMISSION TO Construct Basement Apartment 7945E- Two Bedrooms &

one Bath Room LOCATED ON 15 Wycomet Ave PROVIDED THAT

THE PERSON ACCEPTING THIS PERMIT SHALL CONFORM TO THE TERMS OF THE APPLICATION ON FILE IN THE BUILDING DEPARTMENT AND TO THE PROVISIONS OF THE STATUTES AND THE ORDINANCES RELATING TO THE CONSTRUCTION, MAINTENANCE AND INSPECTION OF BUILDINGS IN THE TOWN OF NANTUCKET, AND THE MASSACHUSETTS STATE BUILDING CODE 780 CMR.

A CERTIFICATE OF OCCUPANCY WILL BE ISSUED UPON RETURN OF THIS PERMIT ONLY AFTER ALL REQUIRED INSPECTIONS HAVE BEEN SIGNED AND DATED BY THE APPROPRIATE INSPECTOR.

THIS PERMIT SHALL BECOME INVALID 6 MONTHS FROM THE DATE OF ISSUE IF THE WORK PERMITTED HAS NOT COMMENCED OR IS NOT PROCEEDING CONTINUOUSLY TO COMPLETION AS FAR AS REASONABLY PRACTICABLE.

THIS CARD MUST BE DISPLAYED IN A CONSPICUOUS PLACE ON THE PREMISES.

CERTIFICATE OF OCCUPANCY NO. _____

Beverly S. Wilkin
BUILDING INSPECTOR

Certificate No: OP-2009-0447

Building Permit No.: BP-2007-0550

Commonwealth of Massachusetts

Town of Nantucket

Building Electrical Mechanical Permits

This is to Certify that the ALTERATION located at
Dwelling Type

15 MIACOMET AV in the TOWN OF NANTUCKET
Address Town/City Name

**IS HEREBY GRANTED A PERMANENT CERTIFICATE OF
OCCUPANCY**

Basement apartment with two bedrooms & one bathroom
CO for permit 655-07 M/P 67-213

This permit is granted in conformity with the Statutes and ordinances relating thereto, and
expires _____ unless sooner suspended or revoked.
Expiration Date

Issued On: Mon Sep 14, 2009

Bernard Butts

GeoTMS© 2009 Des Lauriers Municipal Solutions, Inc.

KEW + KATHY WIGGIN

15 MIALCOMET AVE

NOTE: 5/8 FIRECODE SHEETROCK ON BOTH SIDES OF WOOD FRAME WALLS

R-19 FIBERGLASS INSULATION ABOVE ALL CEILING

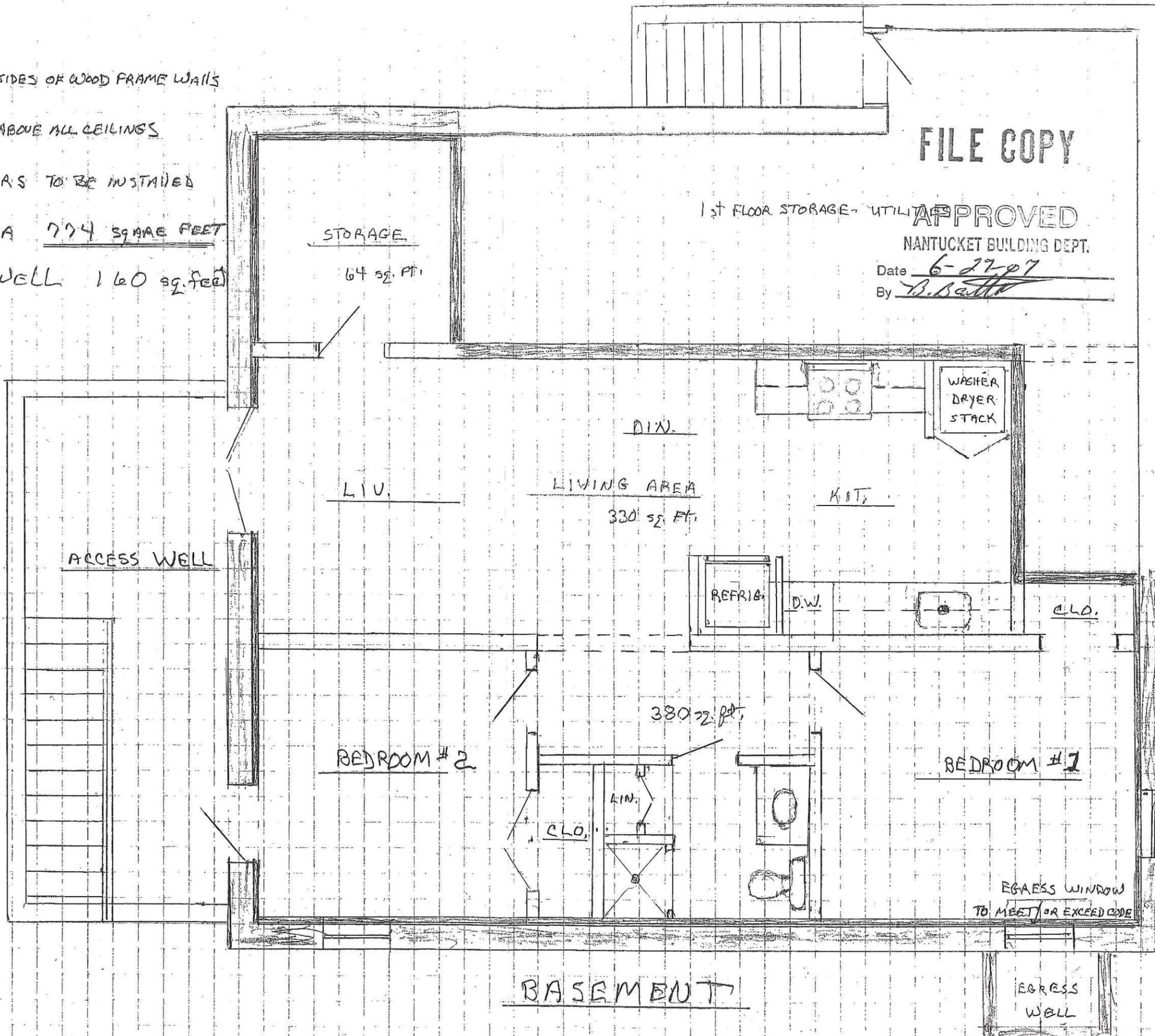
CO AND SMOKE DETECTORS TO BE INSTALLED

TOTAL FINISHED AREA 774 SQUARE FEET

AREA OF ACCESS WELL 160 sq. feet

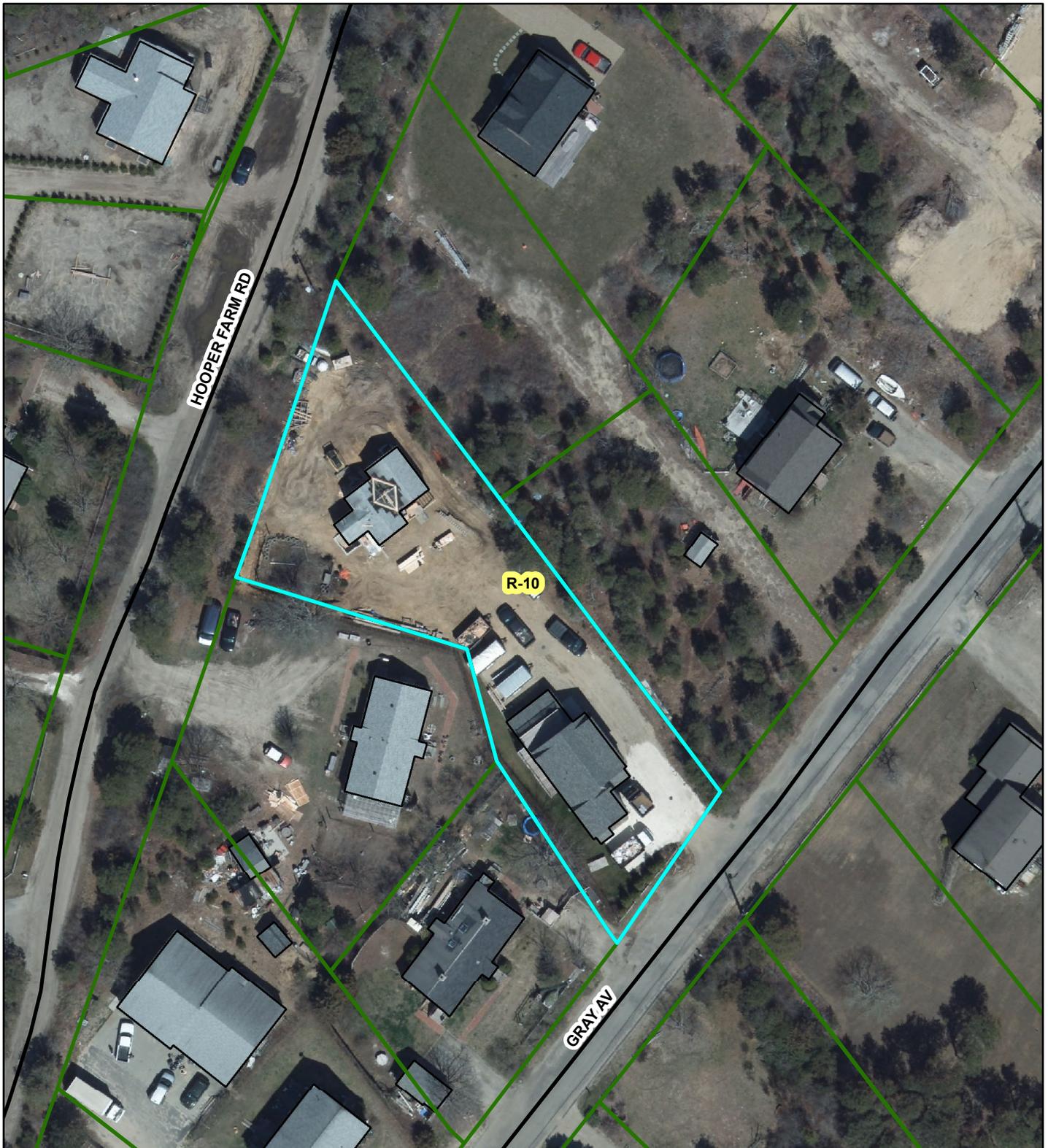
SCALE: 1/4" = 1'-0"

Date: JUNE 13, 2007





#15-16 Secondary Lot Special Permit
Christopher Gallant & Annette Tremblay
15A Gray Ave
Map 67 Parcel 683





Town Clerk
Town & County Building
16 Broad St
Nantucket, MA 02554

mtb

MAR 14 2016 AM 10:49

Nantucket Planning Board

Application for a Special Permit

Date: 3/14/16

File #: 15-16

Name of development: N/A

Owner(s) name(s): Christopher Gallant & Annette Tremblay

Mailing address: C/O Cohen & Cohen Law PC, PO Box 786, Nantucket, MA 02554

Phone number: 508 228 0337 Fax number: 508 228 0900 E-mail: Steven @ Cohen Legal. net

Applicant's name: Same

Mailing address: _____

Phone number: _____ Fax number: _____ E-mail: _____

Engineer / surveyor's name: Paul Santos, Nantucket Surveyors LLC

Mailing address: Swindy way, Nantucket, MA 02554

Phone number: 508 228 0240 Fax number: _____ E-mail: psantos@nantucket-surveyors.com

Location of lot(s):

Street address 15A Gray Ave

Tax Assessors Map 67-683 Parcel _____

Nantucket Registry of Deed: Plan Book _____ and Page _____ OR

Plan File # _____ OR Land Court Plan # LOT 82 at Certificate # 22359
Plan 34507-R

Size of parcel: 17413± sq. ft. Zoning District: R-10

Special Permit sought: (check one)

- Cluster subdivision
- Commercial WECS
- Driveway Access/Curb Cut Special Permit
- Harbor Overlay District (HOD)
- Major Commercial Development (MCD)

Monday, April 11, 2016 Planning Board Packet

- Multi-family Special Permit
- Moorlands Management District Subdivision or Construction (MMD)
- NEHOD (Neighborhood Employee Housing Overlay District)
- MRD (Major Residential Development)
- MIPOD (Mid-Island Planned Overlay District)
- Other Uses Requiring a Special Permit (specify all uses and *Nantucket Code* sections)

Section	Description
139-8C	Secondary Lot - NHNC

Specify all associated Zoning Code relief sought:

Section	Description
139-8C-2h 2e	Shared driveway lot size

Only the zoning relief expressly requested above will be considered as part of this application.

If applying for a Major Commercial Development, specify how the application will comply with Section 139-11 (j) of the *Zoning Code of the Town of Nantucket*, also known as the Town's Affordable Housing Effort:

N/A

Planning Board filing fee due: \$ 5250 + 194.70 (30 abutters)

Engineering Inspection Escrow Deposit due: \$ 0

I/ we hereby certify that the applicant(s) cited above have been authorized by me/ us to file a Special Permit application with the Planning Board on property that I/ we own.

Owner(s)' Signature(s)

Applicant's Signature

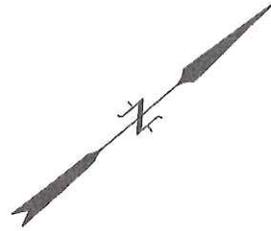
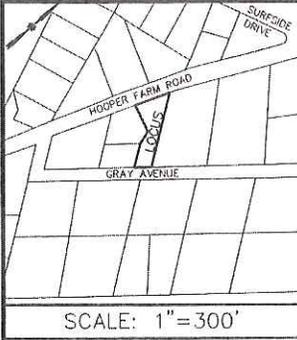
Steven Chen AS Attorney

I/we _____, the undersigned, hereby authorize
_____ to act as agent(s) on my/our behalf and to
make any necessary revisions on this filed application as they may be requested by the Board to meet its governing
rules and guidelines.

Owner(s)' signature(s)

Check List:

- Planning Board Special Permit abutters list – to be obtained at the Tax Assessor's office
- Completed application form entitled "Application to the Planning Board for a Special Permit"
- Application fee of \$250.00 payable to Town of Nantucket
- Abutters fee of \$6.⁴⁹ per abutters payable to Pitney Bowes Reserved Funds
- Four (4) sets of mailing labels with each abutter's name and address
 - 1" x 2 5/8" size, typed labels, are preferred
 - duplicate labels are not necessary if the same owner is listed for more than one abutting property
- Completed application form
- Town Clerk's stamped application (provide 2 copies-one for Town Clerk and one for Planning Board)



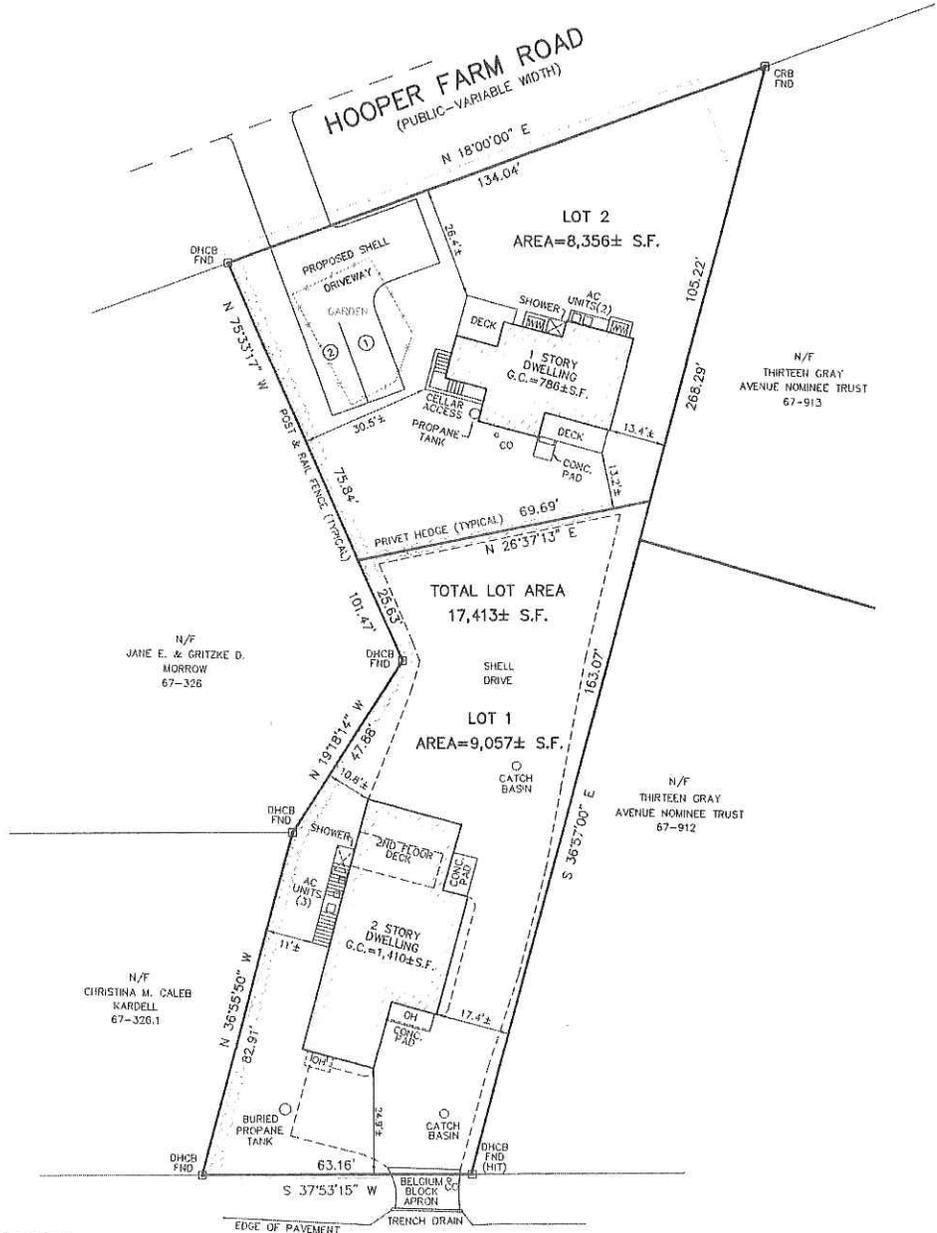
OWNERS REFERENCE:
 CHRISTOPHER GALLANT AND ANNETTE TREMBLAY
 DEED REFERENCE: L.C. CERT. #22359
 PLAN REFERENCE: L.C. PLAN #34507-R
 ASSESSORS REFERENCE: MAP: 67 PARCEL: 683

ZONING CLASSIFICATION
 R-10 (PWR)

MINIMUM LOT SIZE = 10,000 S.F.
 MINIMUM FRONTAGE = 75 FT.
 FRONT YARD SETBACK = 20 FT.
 REAR & SIDE LINE SETBACK = 10 FT.
 ALLOWABLE GROUND COVER RATIO = 25%
 EXISTING GROUND COVER RATIO = 15.6%± (LOT 1)
 EXISTING GROUND COVER RATIO = 9.4%± (LOT 2)

NOTES:

1. TOTAL AREA EQUALS 17,413± S.F.



SITE PLAN TO ACCOMPANY A SPECIAL PERMIT APPLICATION
 SECONDARY RESIDENTIAL LOTS

BEING A SECONDARY LOT PLAN FOR LOT B2 AS SHOWN ON L.C. PLAN #34507-R

#15A GRAY AVENUE
 IN

NANTUCKET, MASSACHUSETTS

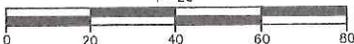
SCALE: 1" = 20' DATE: 02/08/16

PREPARED FOR: CHRISTOPHER GALLANT

NANTUCKET SURVEYORS, LLC.

5 WINDY WAY
 NANTUCKET, MA 02554
 (508) 228-0240

GRAPHIC SCALE
 1" = 20'



GRAY AVENUE
 (PUBLIC--40.00' WIDE)

N-9385



#16-16 MCD Special Permit
The Boarding house
12 Federal Street
Map 42.3.1 Parcel 127



Town Clerk
Town & County Building
16 Broad St
Nantucket, MA 02554 *NAH*



MAR 16 2016 AM 10:01

Nantucket Planning Board

Application for a Special Permit

RECEIVED
MAR 16 2016
CHK # 9170
9171
By

Date: March 14, 2016 File #: 17-16

Name of development: The Boarding House

Owner(s) name(s): Seth C. Raynor et al, as Trustees of Boarding House Realty Trust

Mailing address: c/o Sarah F. Alger, Attorney, 2 South Water Street, Nantucket, MA 02554

Phone number: 508-228-1118 Fax number: 508-228-8004 E-mail: sfa@sfapc.com

Applicant's name: Same as above.

Mailing address: _____

Phone number: _____ Fax number: _____ E-mail: _____

Engineer / surveyor's name: Paul Santos, P.L.S., Nantucket Surveyors, LLC

Mailing address: 5 Windy Way, Nantucket, Massachusetts 02554

Phone number: 508-228-0240 Fax number: 508-228-9856 E-mail: psantos@nantucketsurveyors.com

Location of lot(s):

Street address 12 Federal Street, Nantucket, Massachusetts

Tax Assessors Map 42.3.1 Parcel 127

Nantucket Registry of Deed: Plan Book _____ and Page _____ OR

Plan File # 20-D OR Land Court Plan # _____ at Certificate # _____

Size of parcel: 0.12 acres sq. ft. Zoning District: CDT

Special Permit sought: (check one)

- Cluster subdivision
- Commercial WECS
- Driveway Access/Curb Cut Special Permit
- Harbor Overlay District (HOD)
- Major Commercial Development (MCD)

PAID
MAR 16 2016
BY: J.H.

Monday, April 11, 2016 Planning Board Packet

- Multi-family Special Permit
- Moorlands Management District Subdivision or Construction (MMD)
- NEHOD (Neighborhood Employee Housing Overlay District)
- MRD (Major Residential Development)
- MIPOD (Mid-Island Planned Overlay District)
- Other Uses Requiring a Special Permit (specify all uses and *Nantucket Code* sections)

Section	Description
<u>See attached addendum</u>	

Specify all associated Zoning Code relief sought:

Section	Description
<u>See attached addendum.</u>	

Only the zoning relief expressly requested above will be considered as part of this application.

If applying for a Major Commercial Development, specify how the application will comply with Section 139-11 (J) of the *Zoning Code of the Town of Nantucket*, also known as the Town's Affordable Housing Effort:

Waiver requested

Planning Board filing fee due: \$ 250.00 + ambulance fee \$ 384.93

Engineering Inspection Escrow Deposit due: \$ 5,000.00 (Waiver requested)

I/ we hereby certify that the applicant(s) cited above have been authorized by me/ us to file a Special Permit application with the Planning Board on property that I/ we own.

Boarding House Realty Trust

By: _____

Owner(s)' Signature(s) Seth C. Raynor, Trustee

Applicant's Signature Angela L. Raynor, Trustee

I/we Seth C. Raynor and Angela L. Raynor, Trustees, the undersigned, hereby authorize
Sarah F. Alger and Paul Santos to act as agent(s) on my/our behalf and to
make any necessary revisions on this filed application as they may be requested by the Board to meet its governing
rules and guidelines.

Boarding House Realty Trust

By: _____

Seth C. Raynor, Trustee

Angela A. Raynor, Trustee

Owner(s)' signature(s)

Check List:

- Planning Board Special Permit abutters list – to be obtained at the Tax Assessor's office
- Completed application form entitled "Application to the Planning Board for a Special Permit"
- Application fee of \$250.00 payable to Town of Nantucket
- Abutters fee of \$6.11 per abutters payable to Pitney Bowes Reserved Funds
- Four (4) sets of mailing labels with each abutter's name and address
 - 1" x 2 5/8" size, typed labels, are preferred
 - duplicate labels are not necessary if the same owner is listed for more than one abutting property
- Completed application form
- Town Clerk's stamped application (provide 2 copies-one for Town Clerk and one for Planning Board)

ADDENDUM

12 Federal Street
Nantucket Planning Board
Application for a
Major Commercial Development Special Permit

This is an application for a Major Commercial Development ("MCD") special permit pursuant to Nantucket Zoning By-law (the "By-law") §139-11. The building, located at 12 Federal Street, in the heart of the Commercial Downtown zoning district (the "CDT"), is currently the home of the Boarding House and the Pearl restaurants (the "Locus"). The applicant proposes to change the use of the Locus to a mix of restaurant, retail, office, and residential uses, all permitted uses in the CDT, with maximum legal occupancy and seating being limited to what is allowed under building, fire, and plumbing codes. In connection with such change of use, the applicant also asks that certain outdated restrictions on the use of the building be lifted.

The zoning history of the property is long and somewhat complicated, with all permits to date having been issued by the Nantucket Zoning Board of Appeals, it having been found that the threshold for an MCD had not yet been met.

In 1984, a special permit recorded with Nantucket Deeds in Book 240, Page 144, allowed a portion of the patio at the corner of India and Federal Streets to be enclosed and used for interior restaurant seating. This is the area now known as the Boarding House bar.

A special permit issued in 1986, recorded with Nantucket Deeds in Book 248, Page 130, and re-recorded in Book 248, Page 219, noted that the zoning history of the property prior to mid-1972 was not available and found that the existing uses were as follows:

Level A: 48 seat restaurant
Level B: 48 or 67 seat restaurant
Level C: office and retail
Level D: residential

The 1986 permit went on to allow the following uses:

Level A: 48 seat restaurant (unchanged)
Level B: retail
Level C: office and storage
Level D: residential (unchanged)

In 1991, by special permit recorded with Nantucket Deeds in Book 336, Page 189, the uses of the Locus were allowed to change as follows:

Level A: 48 seat restaurant (unchanged)
Level B: up to two retail stores or offices
Level C: office (either ancillary to other uses or not)
Level D: six (6) person employer dormitory

In 1998, by special permit recorded with Nantucket Deeds in Book 606, Page 119, the last relief granted of record, the uses of the Locus were allowed to change as follows:

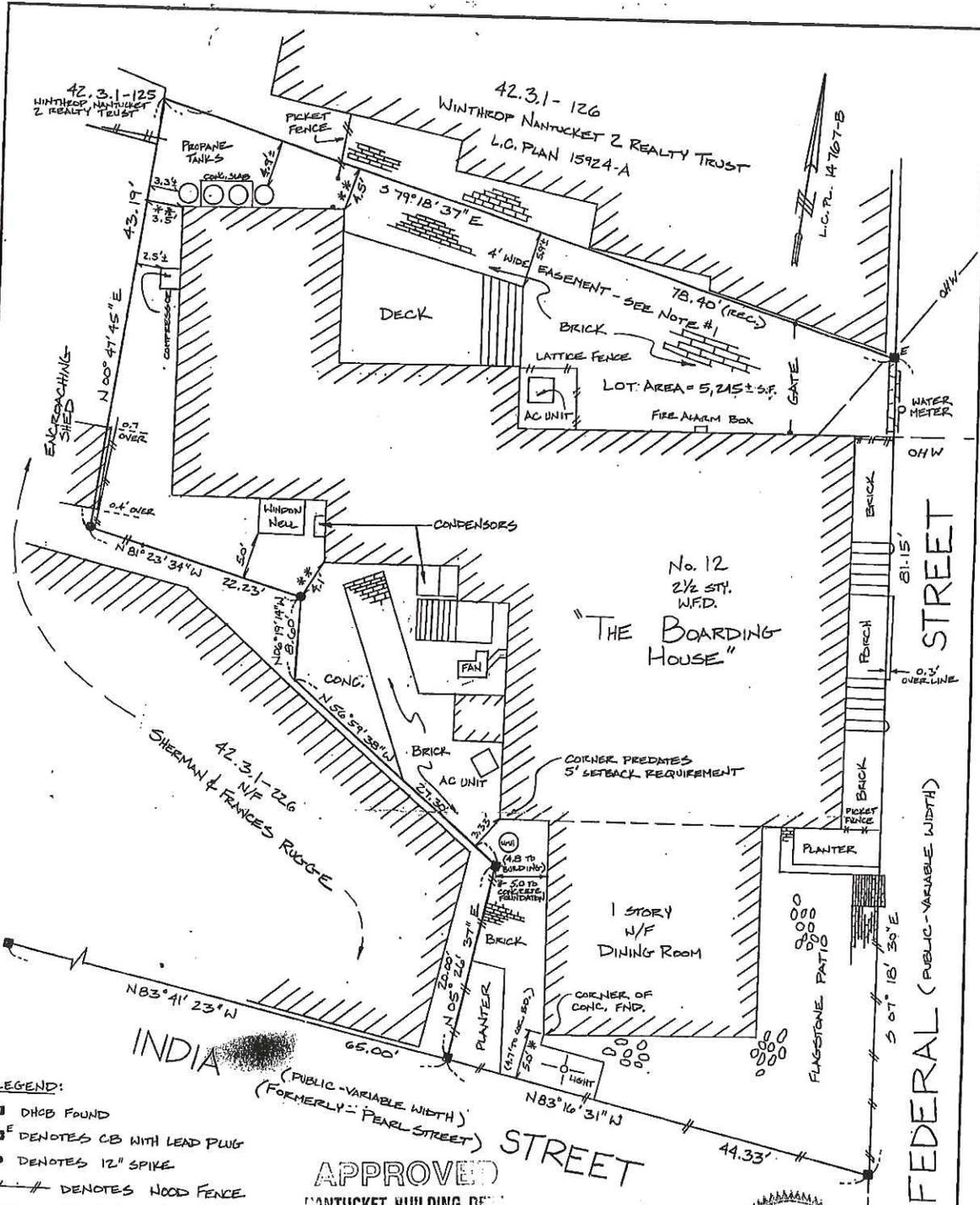
Level A: 48 seat restaurant (unchanged)
Level B: 65 seat restaurant with up to 8 seats on the deck.
Level C: office (either ancillary to other uses or not)
Level D: six (6) person employer dormitory

The structure on the Locus is pre-existing, nonconforming as to height, being higher than the maximum height of thirty (30) feet allowed without a special permit. The Locus is also nonconforming as to open space. The Locus otherwise conforms to the dimensional requirements of the By-law, where there is a zero front and side yard setback requirement in the CDT and where there is no rear yard setback required for corner lots in the CDT under By-law §139-16.C(3) and the definition of "yard, front" in By-law §139.2.

In addition to an MCD special permit under By-law §139-11, the applicant seeks site plan review under By-law §139-23. The applicant further seeks a waiver of the following requirements:

- inclusionary housing under By-law §139-11.J
- storm drainage under By-law §139-23.B(2)(a)
- traffic study under By-law §139-23.B(2)(b)

The applicant also requests that all of the restrictions imposed by the Nantucket Zoning Board of Appeals in the above referenced special permits, most of which are outdated and no longer applicable, be removed and replaced with limitations more in keeping with an operation such as the one proposed in the CDT.



- LEGEND:**
- DHOB FOUND
 - E DENOTES CB WITH LEAD PLUG
 - DENOTES 12" SPIKE
 - #—# DENOTES WOOD FENCE
 - OHW— OVERHEAD WIRES

- NOTES:**
- 1) THE PROPERTY IS SUBJECT TO A 4' EASEMENT AS RECORDED IN DEED BOOK 177 PAGE 170.
 - 2) SUBJECT TO SPECIAL PERMIT (049-83) BK. 240 PG. 114 & (019-86) BK. 248 PG. 219.

APPROVED
 NANTUCKET BUILDING DEPT.
 12/19/99
[Signature]



AS-BUILT PLOT PLAN
 IN
 NANTUCKET, MASSACHUSETTS
 SCALE: 1"=10' DATE: 12/14/98
 DEED REFERENCE: BK. 147 PG. 328
 PLAN REFERENCE: PL. FL. 20D
 ASSESSOR'S MAP 42.31 PCL. 127
 PREPARED FOR:
 THE BOARDING HOUSE
 OF NANTUCKET, INC.
 NANTUCKET SURVEYORS INC.
 5 WINDY WAY
 NANTUCKET, MA, 02554

* RE: MEASUREMENT TO FOUNDATION INDICATES MEASUREMENTS AS GENERALLY REQUIRED AND ACCEPTED BY BUILDING INSPECTOR DURING PERIOD OF ADDITIONAL CONSTRUCTION - SEE CERT. OF OCCUPANCY FOR BUILDING PERMIT No. 3720 OF 1984.

** INDICATES NON-CONFORMING SETBACKS PROTECTED UNDER M.G.L. CH. 40A SECTION 7 (MIR. STATUTE) SEE BUILDING PERMITS No. 1274-1979 & 1427-1980.

CURRENT ZONING MAP: R.C. - RESIDENTIAL/COMMERCIAL
 MINIMUM LOT SIZE: 5000 S.F.
 MINIMUM FRONTAGE: 40'
 FRONTYARD SETBACK: NONE
 SIDE AND REAR SETBACK: 5'
 ALLOWABLE G.C.R.: 50%
 EXISTING G.C.R.: 2717 SF INCLUDING ANCILLARY STRUCTURES

PROPERTY LINES SHOWN ARE TAKEN FROM RECORDED DEED AND PLAN REFERRED TO HEREON, BUILDINGS, MONUMENTS, ETC. ARE PLOTTED FROM FIELD MEASUREMENTS.
 N.B. 41/

BOOK 240 PAGE 114

THE COMMONWEALTH OF MASSACHUSETTS

NANTUCKET
City or Town

BOARD OF APPEALS

Date: February 10, 19 84

Certificate of Granting of Variance or Special Permit
(General Laws Chapter 40A, Section 11)

The Board of appeals of the City or Town of Nantucket

hereby certifies that a Variance or Special Permit has been granted

To THE BOARDING HOUSE, INC.

Address 12 Federal Street

City or Town Nantucket

affecting the rights of the owner with respect to land or buildings at 12 Federal Street,
Nantucket

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said ~~variance~~ — special permit, and that copies of said decision, and of all plans referred to in the decision, have been filed with the planning board and the city or town clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town or city clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.

*No appeal made in this office
in 20 days following decision
of Appeals. Chpts 40-A*

*Section 12
Steven D. Hanich, Jr.
Assistant Town Clerk
December 9, 1985*

Andrew J. Heddy Jr.
Chairman

Clerk



TOWN OF NANTUCKET
BOARD OF APPEALS
NANTUCKET, MASSACHUSETTS 02554

DECISION:

At a meeting of the BOARD OF APPEALS held on Friday, January 27, 1984 in the Town and County Building in the matter of the Application of THE BOARDING HOUSE, INC(049-83), the BOARD finds:

1. This is an Application for relief by SPECIAL PERMIT from the parking requirements of Section 6(b) of the Zoning By-Law and for a Special Permit under Section 7(I) of the Zoning By-Law(extension of a pre-existing non-conforming use). The premises are located at 12 Federal Street and are zoned RESIDENTIAL-COMMERCIAL.

2. Based upon a review of the Application, supporting documents and plans, and testimony at the Public Hearing, the BOARD finds that a grant of the relief sought would not be substantially more detrimental to the neighborhood than the existing use of the premises, especially in light of the fact that the proposed addition of enclosed seating space would entail a reduction in the number of tables now in use on an existing patio.

3. For the reasons set forth, the BOARD hereby GRANTS the Applicant a SPECIAL PERMIT under Sections 6(B) and 7(I) of the Zoning By-Law, by UNANIMOUS vote.

Dated: Nantucket, Mass.
February 10, 1984

NANTUCKET COUNTY
Received and Entered

DEC 09 1985 3:02 P.M.
Donald M. Chabrowski

Andrew J. Williams
Andrew J. Leddy, Jr.
Edward J. Puleo

BOOK 248 PAGE 130

BOARD OF APPEALS
TOWN OF NANTUCKET
NANTUCKET, MASSACHUSETTS 02554

DECISION:

At a Public Hearing of the BOARD OF APPEALS held on FRIDAY, APRIL 4, 1986 at 1:30 p.m. in the Town and County Building, Nantucket, in the matter of the Application of THE BOARDING HOUSE OF NANTUCKET, INC. (019-86) address c/o Reade, Box 2669, Nantucket, MA 02554, the Board enters the following Decision and makes the following findings:

1. Applicant seeks a SPECIAL PERMIT under SECTION 139-33A to alter and extend a prior use, non-conforming for lack of off-street parking, and to alter and extend a pre-existing, non-conforming structure subject to SECTION 139-16A limitation as to ground cover, also a SECTION 139-18G SPECIAL PERMIT from any resulting off-street parking space requirement not met by grandfathering. The premises are located at 12 FEDERAL STREET, (the Boarding House Restaurant), Assessor's Parcel 42.3.1-127 (Plan File 20-D), and in the RESIDENTIAL-COMMERCIAL district.

2. Based upon the Application papers (in this and file 049-83), letters, viewings, and plans and testimony and representations presented at the hearing of February 28 and arguments April 4, 1986, we find that Applicant acquired the premises Nov. 11, 1974 (Applicant has a new principal stockholder, however). For whatever reason, accurate records of the pre mid-1972 zoning uses of the premises are not available to us. We heard variously of restaurant use on Level B (the first floor above ground), retail shop use on Level A (basement) and owner's office and residential use on Level C (2nd floor) and residential on Level D (3rd floor).

3. Level A now has a restaurant use with 48-seat occupancy. At the time of the 049-83 variance relief, Level B remained in restaurant use with seated occupancy of 48 (or 67?). That variance was urged by Applicant, we understand, as allowing a needed increase in restaurant seating by extending a 22'x22' enclosed structure into the open patio dining area. In the next season, Level B restaurant use was terminated (except for a 400 SF baking kitchen) and was continued in the patio extension. On Level C in 1972, we understand, an office for the restaurant used 250 SF. The remainder

BOOK 248 PAGE 131

-86)

-2-

of Level C and all Level D was in residential use without a kitchen, hence, not a dwelling unit.

4. Without seeking a Special Permit or other approval, Applicant introduced a retail shop to Level B in lieu of the restaurant use which is now (off-season) discontinued. Applicant proposes to reintroduce retail store use to Level B, initially in the 1365 SF (or 1569 SF?) space with front entry and 470 SF (or 392 SF?) space with rear entry, asking allowance for future conversion of the 400 SF (?) intervening bake shop. Level C would have a 218 SF office for the retail shop, the remainder for backroom shop storage, off-limits to the public. Level D would continue in residential use with second means of egress for safety and no kitchen, occupancy limit set at a safe and reasonable level, and Nantucket Fire Department approved fire alarm installed.

5. Applicant further proposes closing the streetside entry down to the Level A restaurant area. Entry to the restaurant would then be via a proposed vestibule of 49.5 SF projecting from the east facade of the patio extension where the french doors now provide access. The excess of ground cover over the permitted 50% would be increased by one-third to 52.7% (or to 53.1%?). This increase, while not affecting the parking requirements, does further intrude on the patio open space, precious at this intersection so significant in the life of the community. Applicant urges energy efficiency (now practiced with the Level A entry), and safety and ease of entry especially for handicapped (available via the recently constructed french doors) in seeking the vestibule. We cannot find that it would not be substantially more detrimental to the neighborhood, under the circumstances.

6. Question was raised about intentional abandonment of the Level B restaurant use without lawful replacement, making the discontinuance of use (arguably) irreversible as less non-conforming under Section 139-33D. Also, uncertainty was encountered in reckoning and allocating grandfathered parking requirements incident to the various uses and levels. Overall, Applicant's proposed new Level B and C uses appear not substantially more detrimental to the neighborhood, in parking demands and traffic congestion. To ensure that, we would impose the following conditions:

BOOK 248 PAGE 132

-86)

-3-

NANTUCKET COUNTY
Received and Entered
John W. Cleverly
APR 29 1986 11:21 A.M.

- a. Besides the restaurant, the only commercial use will be one retail business conducted by a single firm or corporation.
- b. Only Level B will be accessible to ^{retail} customers or *the store's* public, Level C being reserved for office and storage use of the business.
- c. Level D will remain in residential use without Kitchen, with secondary egress, and an automatic call-in alarm system approved by the NFD will be installed in the building.
- d. As noted above, no vestibule or other ground cover increase will be permitted.

7. The Planning Board recommended favorable action (although the parking requirement would exceed that grandfathered). Two letters in opposition were received, one concerned about parking, the other possibly misreading the change from (restaurant) office to (retail) office use as a change from office to retail use. In any event, strict enforcement was asked.

8. By comparison with other recent requests for parking relief in the core business district, we see this Application as intrinsically offering parking relief by a diminished restaurant use (as with the Opera House). We think the conditions noted are reasonably calculated to ensure this result so that special permit relief under Section 139-18G may be granted with a finding of physical impossibility to provide off-street parking and, overall, a harmony with the general purpose and intent of the zoning chapter.

9. Accordingly, by UNANIMOUS vote this Board GRANTS to Applicant the requested relief by SPECIAL PERMIT limited by the stated conditions.

Dated: April 7, 1986
Nantucket, MA 02554

Andrew J. Leddy Jr.
Andrew J. Leddy, Jr.

Received April 8, 1986

John W. Cleverly

Assistant Town Clerk APR 28 1986 4:00 P.M.

I certify that a copy has been placed of the decision and filed in the office of the Town Clerk & that no appeal has been filed pursuant to General Laws 40A Section 11.

John W. Cleverly
ASSISTANT TOWN CLERK

Dorothy D. Vollans
Dorothy D. Vollans

William R. Sherman
William R. Sherman

BOOK 248 PAGE 219

THE COMMONWEALTH OF MASSACHUSETTS

Nantucket

BOARD OF APPEALS

Date: April 7, 1986

Certificate of Granting of ~~Variance or~~ Special Permit
(General Laws Chapter 40A, Section 11)

The Board of appeals of the City or Town of Nantucket

hereby certifies that a ~~Variance or~~ Special Permit has been granted

To The Boarding House of Nantucket, Inc. (019-86)

Address 12 Federal Street

City or Town Nantucket

affecting the rights of the owner with respect to land or buildings at 12 Federal Street,
Assessor's Parcel 42.3.1-127, Plan File 20-D

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said ~~variance~~ special permit, and that copies of said decision, and of all plans referred to in the decision, have been filed with the planning board and the city or town clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no ~~variance or~~ special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town or city clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.

William R. Shuman
Chairman
Andrew F. Ledy jr.
Clerk

BOOK 248 PAGE 220

BOARD OF APPEALS
TOWN OF NANTUCKET
NANTUCKET, MASSACHUSETTS 02554

DECISION:

At a Public Hearing of the BOARD OF APPEALS held on FRIDAY, APRIL 4, 1986 at 1:30 p.m. in the Town and County Building, Nantucket, in the matter of the Application of THE BOARDING HOUSE OF NANTUCKET, INC. (019-86) address c/o Reade, Box 2669, Nantucket, MA 02554, the Board enters the following Decision and makes the following findings:

1. Applicant seeks a SPECIAL PERMIT under SECTION 139-33A to alter and extend a prior use, non-conforming for lack of off-street parking, and to alter and extend a pre-existing, non-conforming structure subject to SECTION 139-16A limitation as to ground cover, also a SECTION 139-18G SPECIAL PERMIT from any resulting off-street parking space requirement not met by grandfathering. The premises are located at 12 FEDERAL STREET, (the Boarding House Restaurant), Assessor's Parcel 42.3.1-127 (Plan File 20-D), and in the RESIDENTIAL-COMMERCIAL district.

2. Based upon the Application papers (in this and file 049-83), letters, viewings, and plans and testimony and representations presented at the hearing of February 28 and arguments April 4, 1986, we find that Applicant acquired the premises Nov. 11, 1974 (Applicant has a new principal stockholder, however). For whatever reason, accurate records of the pre mid-1972 zoning uses of the premises are not available to us. We heard variously of restaurant use on Level B (the first floor above ground), retail shop use on Level A (basement) and owner's office and residential use on Level C (2nd floor) and residential on Level D (3rd floor).

3. Level A now has a restaurant use with 48-seat occupancy. At the time of the 049-83 variance relief, Level B remained in restaurant use with seated occupancy of 48 (or 67?). That variance was urged by Applicant, we understand, as allowing a needed increase in restaurant seating by extending a 22'x22' enclosed structure into the open patio dining area. In the next season, Level B restaurant use was terminated (except for a 400 SF baking kitchen) and was continued in the patio extension. On Level C in 1972, we understand, an office for the restaurant used 250 SF. The remainder

BOOK 248 PAGE 221

019-86)

-2-

of Level C and all Level D was in residential use without a kitchen, hence, not a dwelling unit.

4. Without seeking a Special Permit or other approval, Applicant introduced a retail shop to Level B in lieu of the restaurant use which is now (off-season) discontinued. Applicant proposes to reintroduce retail store use to Level B, initially in the 1365 SF (or 1569 SF?) space with front entry and 470 SF (or 392 SF?) space with rear entry, asking allowance for future conversion of the 400 SF (?) intervening bake shop. Level C would have a 218 SF office for the retail shop, the remainder for backroom shop storage, off-limits to the public. Level D would continue in residential use with second means of egress for safety and no kitchen, occupancy limit set at a safe and reasonable level, and Nantucket Fire Department approved fire alarm installed.

5. Applicant further proposes closing the streetside entry down to the Level A restaurant area. Entry to the restaurant would then be via a proposed vestibule of 49.5 SF projecting from the east facade of the patio extension where the french doors now provide access. The excess of ground cover over the permitted 50% would be increased by one-third to 52.7% (or to 53.127). This increase, while not affecting the parking requirements, does further intrude on the patio open space, precious at this intersection so significant in the life of the community. Applicant urges energy efficiency (now practiced with the Level A entry), and safety and ease of entry especially for handicapped (available via the recently constructed french doors) in seeking the vestibule. We cannot find that it would not be substantially more detrimental to the neighborhood, under the circumstances.

6. Question was raised about intentional abandonment of the Level B restaurant use without lawful replacement, making the discontinuance of use (arguably) irreversible as less non-conforming under Section 139-33D. Also, uncertainty was encountered in reckoning and allocating grandfathered parking requirements incident to the various uses and levels. Overall, Applicant's proposed new Level B and C uses appear not substantially more detrimental to the neighborhood, in parking demands and traffic congestion. To ensure that, we would impose the following conditions:

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(019-86)

-3-

NANTUCKET COUNTY
Received and Entered
Andrew J. Leddy Jr.
MAY 02 1986 10:36 A.M.

- a. Besides the restaurant, the only commercial use will be one retail business conducted by a single firm or corporation.
- b. Only Level B will be accessible to ^{retail}customers or ~~the street~~ public, Level C being reserved for office and storage use of the business.
- c. Level D will remain in residential use without Kitchen, with secondary egress, and an automatic call-in alarm system approved by the NFD will be installed in the building.
- d. As noted above, no vestibule or other ground cover increase will be permitted.

7. The Planning Board recommended favorable action (although the parking requirement would exceed that grandfathered). Two letters in opposition were received, one concerned about parking, the other possibly misreading the change from (restaurant) office to (retail) office use as a change from office to retail use. In any event, strict enforcement was asked.

8. By comparison with other recent requests for parking relief in the core business district, we see this Application as intrinsically offering parking relief by a diminished restaurant use (as with the Opera House). We think the conditions noted are reasonably calculated to ensure this result so that special permit relief under Section 139-18G may be granted with a finding of physical impossibility to provide off-street parking and, overall, a harmony with the general purpose and intent of the zoning chapter.

9. Accordingly, by UNANIMOUS vote this Board GRANTS to Applicant the requested relief by SPECIAL PERMIT limited by the stated conditions.

Dated: April 7, 1986
Nantucket, MA 02554

Andrew J. Leddy Jr.
Andrew J. Leddy, Jr.

Received April 8, 1986
L. J. Harris
Assistant Town Clerk
I certify that 30 days have elapsed since the decision was filed in the office of the Town Clerk, and that no appeal has been filed, pursuant to General Laws, c. 24A, Section 11.
L. J. Harris
TOWN CLERK
May 1986

Dorothy D. Vollans
Dorothy D. Vollans

William R. Sherman
William R. Sherman

BOOK 0366 PAGE 189

TOWN OF NANTUCKET
BOARD OF APPEALS
Nantucket, Mass. 02554

CERTIFICATE OF GRANTING OF MODIFICATION OF SPECIAL PERMIT
(Massachusetts General Laws, Chapter 40A, Section 11)

The BOARD OF APPEALS of the TOWN OF NANTUCKET, hereby certifies that a MODIFICATION OF SPECIAL PERMIT has been GRANTED To: (Owner/Applicant) THE BOARDING HOUSE OF NANTUCKET, INC.

Address: P. O. Box 2669, Nantucket, Mass. 02584

affecting the rights of the Owner/Applicant with respect to the land or building at: 12 Federal Street, Nantucket, Mass.

Deed Reference: Book 147, page 328

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

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


Robert J. Leichter, Chairman


C. Marshall Beale, Clerk

BOOK 0366 PAGE 190

Board of Appeals
Town of Nantucket
Nantucket, Massachusetts 02554

DECISION:

At a public hearing of the BOARD OF APPEALS held on FRIDAY, APRIL 26, 1991, at 1:00 P.M. in the TOWN AND COUNTY BUILDING, Federal and Broad Streets, Nantucket on the application of THE BOARDING HOUSE OF NANTUCKET, INC. (027-91), having a mailing address c/o Reade & Alger Professional Corporation, 6 Young's Way, Post Office Box 2669, Nantucket, Massachusetts 02584, the Board enters the following decision and makes the following findings:

1. Applicant seeks a modification of the Special Permit granted in the Board's File No. 019-86, to allow Level B to be used for up to two retail establishments and/or non-ancillary offices and to allow Level C to be used either for non-ancillary office space or for office and storage space ancillary to the retail uses on Level B. Applicant requests all necessary parking relief by Special Permit. The premises are located at 12 FEDERAL STREET, Assessor's Parcel 42.3.1-127, Plan File 20-D, and are zoned RESIDENTIAL-COMMERCIAL.

2. Our decision is based upon the application, representations and materials presented to us at the public hearing, including plans, documents in our File No. 019-86, and viewings of the premises.

3. The premises, which, as we found previously, have a pre-existing nonconformity with the zoning by-law consisting of their lack of on-site, off-street parking, are improved by a commercial structure containing four levels, designated, for our purposes, as Levels A, B, C, and D from the lowest to the highest level. The existing Special Permit allows use of the premises with a 72-seat restaurant on Level A; retail space of 2,230 square feet on Level B; office space of 218 square feet and storage space of 1,147 square feet on Level C; and a dwelling, having no kitchen, used for employees on Level D. The decision in File No. 019-86 limits commercial use to the restaurant and one retail business, with Level C being limited to ancillary office and storage use. The applicant proposes to use Level B for retail and/or non-ancillary office space and to use Level C for either non-ancillary office space or for office and storage space ancillary to the uses on Level B. No changes in the uses of Levels A and D are proposed.

4. The applicant informs us that the existing Special Permit has proved vague and difficult to interpret in certain respects, and that its apparent limitation of Level B to one retail enterprise, with Level C restricted to uses ancillary to

BOOK 0366 PAGE 191

that retail enterprise, has been unworkable. The result has been that large portions of this important commercial structure have often lain fallow. Such disuse is detrimental to maintaining the vitality of the core district, which, as we have heard, is of major concern.

5. While Level D is not specifically before us, and no relief is requested as to it, we find that it has been, and continues to be, used as an employer dormitory and that it is in the public's best interest that it now be formally designated as such and that its occupancy be limited to a maximum of six (6) persons. Our decision confirms that Level D is, and has been, an employer dormitory, requires that it continue to have no kitchen, and limits its maximum occupancy to six (6) persons; however, we impose no restriction that such employer dormitory be used solely in connection with the commercial enterprises upon the premises. As required by the Code of the Town of Nantucket, the employer dormitory shall be licensed and inspected annually.

6. The maximum parking requirements under Section 139-18.D. for the premises, as existing and as proposed, are as follows:

Level	Proposed Use	Parking Requirements- Existing	Parking Requirements- Proposed	Net Change
A	Restaurant, 72 seats Employees, up to 13	9 4	9 4	0 0
B	Retail or office, 2,230 square feet Employees for retail use, up to 7	11 2	11 2	0 0
C	Office, 1,365 square feet	2 (NOTE ¹)	7	+5
D	Employer dormitory, max- imum occupancy of 6	1 (NOTE ²)	4	+3
Total		29	37	+8

NOTE¹: Computed as one space for 218 square feet of office space and one space for 1,147 square feet of storage.

NOTE²: Computed as one dwelling unit.

No on-site parking is currently provided, and none is proposed; we find that the premises are not physically capable of providing any such parking. We further find that granting relief from such parking requirements by special permit is in harmony with the general purposes and intent of the by-law, particularly since 3 of the additional 8 spaces that would otherwise be required

BOOK 0366 PAGE 192

result from our designation of Level D as an employer dormitory, which we feel strongly is a crucial benefit to the public safety and welfare.

7. Applicant proposed no limitation on the number of offices to be contained on Level B or Level C. Although we are generally in favor of the mixed office, retail, restaurant, and dormitory use of the premises, Board members expressed great concern that the intensity of usage resulting would be unacceptable and that such freedom would allow the Applicant to chop the premises up into any number of extremely small offices and to create the appearance of a mini-mall. Accordingly, this decision restricts Level B to no more than a combination of two (2) retail stores and/or three (3) non-ancillary offices and Level C to three (3) non-ancillary offices and storage space ancillary to the uses on Level B, or any combination thereof.

8. No opposition to the application was presented to the Board.

9. Based upon all of the above and upon the conditions stated, we find that the uses permitted under the requested modification to the existing Special Permit are not substantially more detrimental to the neighborhood and, in fact, are beneficial to the neighborhood in that Level D is now officially recognized as an employer dormitory and the building, as a whole, will be put to its highest and best use, contributing to the ongoing vitality of the core district. Accordingly, we find that this modification of the existing Special Permit is in harmony with the general purpose and intent of the By-law.

10. Accordingly, by UNANIMOUS VOTE, this BOARD, by SPECIAL PERMIT, grants the requested modification to the existing Special Permit and all necessary parking relief, subject to the limitations and conditions herein set forth.

Dated: May 17, 1991

Robert J. Leichter
Robert J. Leichter

Linda F. Williams
Linda F. Williams

Ann Balas
Ann Balas

Peter F. Dooley

Kate Mitchell
Kate Mitchell

*Received May 17, 1991
Jeanne M. Hallgate, Clerk.*

I CERTIFY THAT 20 DAYS HAVE ELAPSED AFTER THE DECISION WAS FILED IN THE OFFICE OF THE TOWN CLERK, AND THAT NO APPEAL HAS BEEN FILED, PURSUANT TO GENERAL LAWS 40A, SECTION 11.
Jeanne M. Hallgate
TOWN CLERK
June 20, 1991

NANTUCKET, MASS. JUN 14 1991
REC'D ENTERED
SANDRA M CHADWICK
ATTEST REGISTER
1:00PM



BOOK 0606 PAGE 119
TOWN OF NANTUCKET

BOARD OF APPEALS

NANTUCKET, MASSACHUSETTS 02554

Date: December 10, 1998

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

Application No.: 101-98

Owner/Applicant: BOARDING HOUSE REALTY TRUST, RICHARD L. DUECHEL, SETH C. RAYNOR AND ANGELA L. RAYNOR, TRUSTEES

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

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

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


Dale W. Waine, Chairman

cc: Town Clerk
Planning Board
Building Commissioner

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

ROOM 0606 PAGE 120

Map 42.3.1
Parcel 127
Residential - Commercial

12 Federal Street
Deed Book 378, Page 42
Plan File 20-D

NANTUCKET ZONING BOARD OF APPEALS

DECISION:

The Board of Appeals at a Public Hearing held on Friday, October 16, 1998, at 1:00 p.m. in the Conference Room of the Town Annex Building, 37 Washington Street, Nantucket, Massachusetts, made the following Decision on the application (101-98) of BOARDING HOUSE REALTY TRUST, RICHARD L. BUECHEL, SETH C. RAYNOR AND ANGELA L. RAYNOR, TRUSTEES under Declaration of Trust dated December 28, 1991, of 12 Federal Street, Post Office Box 1014, Nantucket, Massachusetts 02554.

1. Applicant is seeking a MODIFICATION of a SPECIAL PERMIT granted in Board of Appeals Decisions 027-91, to allow the conversion of Level B from the retail/office uses permitted in that Decision to a restaurant use. The Applicant proposes to use Level B as a 65-seat restaurant, which use would involve up to 13 employees. Applicant requests the flexibility of locating eight (8) of those 65 seats on the deck on the northerly side of the building from time to time or elsewhere on the Premises. No structural expansion of the building is proposed. The parking requirements for this use are 16 spaces for the restaurant and four (4) for the employees, for a total of 20. Applicant also seeks SPECIAL PERMIT relief from the parking requirements of Section 139-18, waiving seven (7) spaces. The Locus is nonconforming as to ground cover ratio, setback, minimum lot size and parking requirements. The Premises is located at 12 FEDERAL STREET, Nantucket, Massachusetts, Assessor's Map 42.3.1, Parcel 127, Plan File 20-D. The Locus is zoned RESIDENTIAL - COMMERCIAL.

2. The Board's decision is based upon the application and materials submitted with it, plans, and representations and testimony received at the hearing on October 16, 1998. Several letters in support of the application were received, one person spoke in favor of the application, one neighbor expressed concerns about various operational issues, a petition in favor of the project was presented by the Applicant containing signatures of 54 members of the general public, and the Planning Board recommended that the requested relief be granted.

3. Based on a review of the prior zoning decisions, the Board finds that the proposed Level B use change does not create a Major Commercial Development. No expansion of commercially-used space is proposed. The prior decisions show a historical decrease in the total number of restaurant seats in this building, and therefore the addition of 65 seats at this time is less than the 100 new seats required to trigger MCD status. The 1991 Special Permit establishes that there was an increased parking requirement of 8 spaces at that time, with 13 spaces allocated to the uses on Level B. The parking requirements for the proposed restaurant use of Level B is 20 spaces and therefore this project would add 7 spaces. The uses proposed since the enactment of the MCD provisions in the Zoning By-law (including the use proposed in this application) will have resulted in a net gain of 15 parking spaces.

4. No structural expansion of the building is proposed, and therefore none of the pre-existing dimensional non-conformities (as to ground cover and setback) will be impacted. In connection with the deck on the northerly side of the structure where the outdoor seating is proposed, an awning over the deck and a trellis-like enclosure along the side of the deck are proposed to mitigate noise that can be associated with outdoor seating. No outdoor seating in connection with the Level B restaurant is proposed other than the eight seats on the deck. In response to concerns expressed by several Board members, the Applicants proposed that the use of the deck would be limited to a single seating each evening beginning no later than 7:30 p.m. so that the deck will be vacated by 10:30 p.m. and that there would be no music on the exterior of the building. In the event the outdoor seating is not in use, some of the 65 seats may be located elsewhere within the building. The Board finds that the proposed new restaurant on Level B is in harmony with the general purpose and intent of the Nantucket Zoning By-law and will not increase any dimensional non-conformities.

5. Concerns were expressed by a neighbor regarding the operations of the restaurant on Level A, in particular the outdoor seating in the patio area to the south and east of the building and the bar area. The applicants agreed that on the days when the patio is in use the patio entrance will be staffed to control noise and overcrowding from 10 p.m. until closing. In addition, to further address potential noise issues, the Applicants agree that the windows and skylight in the bar area (Level A) will remain closed from 10 p.m. until closing.

6. Notwithstanding that the existing Special Permit allows Level B to be used as a separate and distinct commercial space and use, Board members were concerned that the two restaurants proposed for this building should function cooperatively, particularly as to loading and delivery services. The Applicants therefore stipulated that the restaurants, while they may be operated under separate names with different menus, would be under common control.

7. The Board finds that it is impossible to provide parking on the site, that the uses proposed are consistent with the commercial downtown area, and that the waiver of the additional parking spaces required is not substantially more detrimental to the neighborhood than the existing circumstances and will be in harmony with the intent and purpose of the Zoning By-law.

8. Accordingly, by a unanimous vote, the Board hereby GRANTS a MODIFICATION of a SPECIAL PERMIT NO. 027-91 to permit the conversion of Level B from retail/office uses to a 65-seat restaurant and GRANTS a SPECIAL PERMIT to waive the additional seven (7) parking spaces required under Section 139-18 for that use on the following conditions:

- a) that the exterior seating to the north of the structure associated with the new restaurant will be limited to (i) a maximum of 8 of the 65 permitted seats, and (ii) the existing deck area with no seating at ground level on that side, and (iii) to a single seating each evening beginning no later than 7:30 p.m. with the deck vacated by 10:30 p.m.;
- b) that there would be no music broadcast to the exterior of the building;

BOOK 0606 PAGE 122

- c) that, when the patio to the south and east of the building is in use, the patio entrance will be staffed to control noise and overcrowding from 9 p.m. until closing;
- d) that the windows and skylight in the bar area (Level A) will remain closed from 10 p.m. until closing;
- e) that the restaurants (the new restaurant on Level B and the existing restaurant on Level A), while they may be operated under separate names with different menus, will be under common control; and
- f) that an awning over the exterior deck seating area and a trellis along the northerly edge of the deck shall be installed, and the area along the northerly property line landscaped and maintained.

Dated: December 10, 1998

Dale Wainc
Dale Wainc

Michael O'Mara
Michael O'Mara

Linda F. Williams
Linda F. Williams

Nancy Sovern
Nancy Sovern

Edward Foole
Edward Foole

RECEIVED
TOWN CLERK'S OFFICE
NANTUCKET, MA 02554

DEC 10 1998

TIME: 3:48 p.m.
Asst. CLERK: *XL Carpenter*

I CERTIFY THAT 20 DAYS HAVE ELAPSED AFTER THE DECISION WAS FILED IN THE OFFICE OF THE TOWN CLERK AND THAT NO APPEAL HAS BEEN FILED PURSUANT TO GENERAL LAWS 41A, SECTION 17.

Sandra M. Chadwick
TOWN CLERK
JAN 04 1999

JAN 05 1999
NANTUCKET COUNTY
REC'D ENTERED

10:01 AM
SANDRA M CHADWICK
ATTEST REGISTER

End of
Instrument

Catherine Ancero

From: Holly Backus
Sent: Friday, April 08, 2016 1:17 PM
To: Michelle Whelan
Cc: Catherine Ancero; psantos@nantucketsurveyors.com
Subject: RE: Letter in support of application by the Boarding House

Michelle,

Thank you for your letter. It will be provided to the Planning Board.

Thanks,

Holly E. Backus
Land Use Specialist
Town of Nantucket

From: Michelle Whelan [<mailto:michelle@sustainablenantucket.org>]
Sent: Friday, April 08, 2016 1:04 PM
To: Holly Backus
Subject: Letter in support of application by the Boarding House

To the Town of Nantucket Planning Board-

I am writing in support of the current application of Boarding House Inc. 12 Federal Street, Nantucket Island.

Sustainable Nantucket at 14 Federal Street has had our offices next to The Pearl and The Boarding House for the past 8 years, and in our experience the Raynors have always been excellent neighbors. We have never had any issues from operations of their restaurants.

We fully support the proposed use of The Pearl garden area between our buildings, in keeping with all the other restaurant properties in our neighborhood, and we hope you will approve this application.

Sincerely,

Michelle Whelan

Executive Director
Sustainable Nantucket

PO Box 1244
Nantucket, MA 02554

(508) 228-3399

Catherine Ancero

From: Holly Backus
Sent: Friday, April 08, 2016 1:19 PM
To: Karen Golov
Cc: Catherine Ancero; psantos@nantucketsurveyors.com
Subject: RE: pearl/Boarding House

Karen,

Thank you for your email. It will be provided to the Planning Board.

Thanks,

Holly E. Backus
Land Use Specialist
Town of Nantucket

From: Karen Golov [<mailto:eyeoftheneedleack@gmail.com>]
Sent: Friday, April 08, 2016 1:17 PM
To: Holly Backus
Subject: pearl/Boarding House

Dear Holly
this is for the planning board

I am writing in support of the application of Boarding House Inc. 12 Federal Street Nantucket Island. I have resided upstairs at 14 Federal Street for over 30 years. I also own the Eye of the Needle, my retail boutique on the first floor of said location. For 25 years of those 30 plus years the Raynors have been my neighbors, as well as their restaurants our My Favorites.

I fully support a more dynamic use of The Pearl garden area between our buildings, consistent with all the other restaurant properties in my neighborhood.

The Pearl and The Boarding House are The anchor of Federal Street! They are a vital component of our commercial district on Federal Street.

The Raynors have always been responsible neighbors as owners and operators for 25 years.

They are most sensitive to Nantucket issues and are supporters of many important Nantucket charities. I have Never had any issues from operations of their restaurants! No noise issues or odors other than the extra pounds I gain each season from their fabulous food!

Thank you

Karen and Manny Golov
Eye of the Needle
14 Federal Street
Nantucket Island
Mass 02554



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

Agenda
(Subject to Change)

Thursday, April 14, 2016

1:00 PM

4 Fairgrounds Road

Public Safety Facility – Community Room

➤ **CALL TO ORDER:**

1

➤ **APPROVAL OF THE AGENDA:**

➤ **APPROVAL OF THE MINUTES:**

- March 10, 2016

➤ **OLD BUSINESS:**

- 04-16 Donald J. Mackinnon, Trustee of Nantucket 106 Surfside Realty Trust – *a/k/a* SURFSIDE COMMONS 40B 106 Surfside Road Mackinnon / Schwartz
Extended Close of Public Hearing deadline September 30, 2016 (180 days from Initial Public Hearing with Extension)

Decision Action deadline November 10, 2016 (40 days from close of Public Hearing)

The Applicant is seeking a Comprehensive Permit in accordance with M.G.L. Chapter 40B, as approved by Massachusetts Housing Partnership, in order to allow a multi-family project consisting of 56 rental apartments with fourteen (14) to be designated as affordable units. The apartments will be arranged in two 2 ½ story buildings with thirteen units each and two 3 ½ story buildings with fifteen (15) units each. There will be a total of two 1-bedroom units, forty two 2-bedroom units, and twelve 3-bedroom units. The project will also include a clubhouse and pool. If approved, the property will be permanently deed-restricted for the purpose of providing affordable year-round housing. The file with a copy of the complete and updated list of requested waivers is available at the Zoning Board of Appeals office at 2 Fairgrounds Road between the hours of 7:30 A.M. and 4:30 P.M., Monday through Friday or via link to posting of all document related to this project found on Town of Nantucket website below:

<http://www.nantucket-ma.gov/708/Atlantic-Development---106-Surfside-Road>

Monday, April 11, 2016 Planning Board Packet

Posted with Town Clerk on April 8, 2016

Posting # _____

The Locus, situated at 106 Surfside Road, is shown on Assessor's Map 67 as Parcel 80. Locus is also shown as Block 22 on Plan File 3-D and as Parcels 7 -11 (inclusive) on Plan No. 2014-52. Evidence of owner's title is recorded in Book 1410, Page 205 and Book 1488 Page 213, both on file at the Nantucket County Registry of Deeds. The site is zoned Limited Use General 2 (LUG-2) and Limited Use General 3 (LUG-3).

- 05-16 William J. Stone, II 8 Atlantic Avenue Jensen / Cohen
Action deadline June 8, 2016
Applicant is requesting Special Permit relief pursuant Zoning Bylaw Section 139-16.C(2) to validate unintentional front and rear yard setback intrusions, both of which relate to the siting of stoops and stairs required by Building Code. In the alternative and to the extent necessary, the applicant seeks modification of prior Variance relief to validate the site of the dwelling. The Locus, an undersized lot of record created pursuant to M.G.L. Chapter 41 Section 81L, is situated at 8 Atlantic Avenue, is shown on Assessor's Map 55 Parcel 18, and as Lot 62 on Plan No. 2011-5. Evidence of owner's title is recorded at Book 1234, Page 237 on file at the Nantucket County Registry of Deeds. The site is zoned Residential 1 (R-1).
- 06-16 1620 Capital, LLC 25 Broadway Brescher/ Theroux
Action deadline May 11, 2016
Applicant is requesting Special Permit relief to allow the alteration of a pre-existing nonconforming structure by lifting the structure to install a new foundation, adding new second floor dormers, and extending the existing one-story entry to two stories. While the height will increase from 20 feet to 21 feet, the footprint will not change. The property and pre-existing nonconforming duplex thereon are nonconforming with respect to lot area, setbacks, ground cover ratio, and use. The proposed alterations will not increase the pre-existing nonconformities. The Locus, an undersized lot of record, is situated at 25 Broadway, and is zoned Sconset Old Historic (SOH).
- 10-16 MHD Partners Real Estate, LLC 4 Goose Cove Lane Brescher/Osgood
Action deadline June 8, 2016
Applicant is requesting Variance relief pursuant to Zoning By-law Section 139-32 from the intensity regulations in the Village Height Overlay District (VHOD). Specifically, applicant intends to relocate an existing cottage from another property onto the subject premises, a vacant oversized lot. In 2009, the VHOD was adopted and the structure, which is 25.5 feet above average mean grade, was rendered pre-existing nonconforming. The maximum allowable height in the VHOD is 25 feet pursuant to Section 139-12.K(1). The structure, upon being relocated, will continue to be nonconforming with respect to height but will conform to all other intensity regulations of the Village Residential zoning district. The Locus is situated at 4 Goose Cove Lane, is shown on Assessor's Map 59.4 as Parcel 30, and as Lot 894 upon Land Court Plan No. 3092-119. Evidence of owner's title is registered at Certificate of Title 25954 on file at the Nantucket County District of the Land Court. The site is zoned Village Residential (VR) and is sited within the Village Height Overlay District (VHOD).

2

➤ **NEW BUSINESS:**

- 11-16 John N. Sullivan and Marie T. Sullivan 5 Appleton Road Sullivan
Action deadline July 13, 2016
Applicant is seeking relief by Special Permit pursuant to Zoning By-law Section 139-16.C (1) to reduce the side yard setback from ten (10) to five (5) feet in order to site a proposed 400 square foot garage within the ten (10) foot northerly side yard setback. The Locus is situated at 5 Appleton Road, is shown on Assessor's Map 66 as Parcel 390, and as Lot 19 upon Land Court Plan 13554-D. Evidence of owner's title is registered on Certificate of Title No. 22449 at the Nantucket County District of the Land Court. The site is zoned Residential 10 (R-10).

Monday, April 11, 2016 Planning Board Packet

Posted with Town Clerk on April 8, 2016

Posting # ____

➤ **OTHER BUSINESS:**

1. Discussion of time limit established for Board members to review and comment on Zoning Administrator decisions issued pursuant to Section 139-29.C.
 - a. At the August 13, 2015 meeting, the Board discussed protocol and determined that 48 hours would be sufficient to allow ample time to read and review ZA decisions. The Board may want to extend/revise that time limit.
2. Discussion of appropriate circumstances which could warrant scheduling of Special Meetings.
3. Regular monthly meeting time changed per request of two Board members
May 12, 2016 meeting will take place from 11am – 4pm.

➤ **ADJOURNMENT.**

Town and County of Nantucket
Board of Selectmen • County Commissioners

Robert R. DeCosta, Chairman
Rick Atherton
Matt Fee
Tobias Glidden
Dawn E. Hill Holdgate



16 Broad Street
Nantucket, Massachusetts 02554

Telephone (508) 228-7255
Facsimile (508) 228-7272
www.nantucket-ma.gov

C. Elizabeth Gibson
Town & County Manager

*AGENDA FOR THE MEETING OF THE
BOARD OF SELECTMEN
APRIL 6, 2016 - 6:00 PM
PUBLIC SAFETY FACILITY COMMUNITY ROOM
4 FAIRGROUNDS ROAD
NANTUCKET, MASSACHUSETTS*

- I. CALL TO ORDER*
- II. BOARD ACCEPTANCE OF AGENDA*
- III. ANNOUNCEMENTS*
 1. The Board of Selectmen Meeting is Being Video/Audio Recorded.
 2. Town Offices Closed Monday, April 18, 2016 in Observation of Patriots' Day.
- IV. PUBLIC COMMENT**
- V. NEW BUSINESS**
- VI. APPROVAL OF MINUTES, WARRANTS AND PENDING CONTRACTS*
 1. Approval of Minutes of March 16, 2016 at 6:00 PM; March 23, 2016 at 6:00 PM.
 2. Approval of Payroll Warrants for Week Ending March 27, 2016; April 3, 2016.
 3. Approval of Treasury Warrants for March 30, 2016; April 6, 2016.
 4. Approval of Pending Contracts for April 6, 2016 - as Set Forth on the Spreadsheet Identified as Exhibit 1, Which Exhibit is Incorporated Herein by Reference.
- VII. CONSENT ITEMS*
 1. Gift Acceptances: Natural Resources Department; Human Services (Saltmarsh Senior Center).

VIII. CITIZEN/DEPARTMENTAL REQUESTS

1. Nantucket Land Council, Inc.: Request for Preliminary Review of Conservation Restriction Donated by The Nature Conservancy, to be Held by Nantucket Land Council for 130 Eel Point Road.
2. Great Harbor Yacht Club, Inc.: Request for Acceptance and Execution of First Amendment to Grant of Pedestrian Easement.
3. Request for Determination that Nobuchi, Inc. d/b/a Sushi by Yoshi, Located at 2 East Chestnut Street, is Not Detrimental to the Educational and Spiritual Activities of a Church or School Pursuant to Section 16C of MGL Chapter 138.
4. Request for Determination that Faros 17 Broad LLC d/b/a Greydon House, Located at 17 Broad Street, is Not Detrimental to the Educational and Spiritual Activities of a Church or School Pursuant to Section 16C of MGL Chapter 138.

IX. TOWN MANAGER'S REPORT

1. Auditor: Overview of Fiscal Year 2015 Audit.
2. Update on Wannacomet Water Company New Administration Building.
3. Department of Public Works: Playing Field Maintenance Update.
4. Department of Public Works: Review of Dukes Road Sewer Installation.
5. Fire Chief: Update on March 23, 2016 Moorlands Fire; Volunteer Program.
6. Review of Provisions for New Jetties Beach Concession Lease (2017-2020).
7. Monthly Town Management Activities Report.

X. SELECTMEN'S REPORTS/COMMENT

1. Appeal of Scallop Catch Confiscation and Associated Penalty (Pennel and Sharon Ames).
2. Review of Comments to Zoning Board of Appeals Regarding Surfside Commons (106 Surfside Road) 40B Comprehensive Permit Application.
3. Committee Reports.

XI. ADJOURNMENT

** Identified on Agenda Protocol Sheet.*

April XX, 2016

Nantucket Zoning Board of Appeals
2 Fairgrounds Road
Nantucket, MA 02554

Re: Surfside Commons 40B Comments

Applicant: Surfside Commons LLC c/o Atlantic Development
Project: Surfside Commons in Nantucket/56 rental units on 2.5 acres
Location: 106 Surfside Road, Nantucket, MA
Subsidizing Agency: Massachusetts Housing Partnership

Dear Members of the Zoning Board of Appeals:

On April XX, 2016, the Board of Selectmen reviewed the pending application by Surfside Commons LLC for a comprehensive permit for 2.5 acres of land at 106 Surfside Road (“Property”) to construct 56 rental units (with 14 affordable units) in 4 residential buildings, with 122 bedrooms, 100 parking spaces and a clubhouse with a pool on (the “Project”); and the Board of Selectmen voted XX to XX to recommend to the Zoning Board of Appeals that any grant of a comprehensive permit shall be conditioned upon the following requirements:

- (1) **Sewer District Issue**. Since the Property is not in a municipal sewer district, legislative action, which the ZBA has no jurisdiction to take, would be required to include the Property, and any comprehensive permit relief should be conditioned upon the requirement that the necessary legislative action shall be taken before any connection is made.

The Zoning Board of Appeals should carefully review the following documents:

- St. 2008, c.396, special legislation that provides for creation and alteration of municipal sewer district only through legislative action;
- Nantucket Code, Chapter 41-3, which established municipal sewer districts using St. 2008, c.396 in 2010 (i.e., 2010 ATM approval of Article 31 on June 17, 2010);
- Nantucket Sewer Districts Town and Siasconset Map, as amended through April 2015, which shows the municipal sewer districts and that the Property is outside the municipal sewer districts; and
- Nantucket CWMP, the Town’s 20-year wastewater planning document, which does not include the Property.

As the Zoning Board of Appeals is well aware, in 2008, the General Court enacted legislation (St. 2008, c.396) that authorized Nantucket to create municipal sewer districts through Town Meeting legislation. In 2010, Nantucket Town Meeting used St. 2008, c.396 to adopt a by-law that created municipal sewer districts that can be altered only through Town Meeting Action. The Property is not in a municipal sewer district.

Since the 2010 adoption of the sewer district by-law under St. 2008, c.396, Nantucket has undertaken extensive sewer planning and now has a 20-year comprehensive wastewater plan. The careful and comprehensive planning undertaken by the Town has resulted in sewer districts that are carefully aligned with Town Overlay District properties, past 40B developments, and needs areas that were identified in the Comprehensive Wastewater Management Plan approved by the Town. The Property is not currently in a sewer district and there is no plan to extend a municipal sewer district to the Property within the next 20 years.

St. 2008, c.396, §1 expressly provides that, once Town Meeting establishes sewer districts, “No other sewers shall be constructed in any public roads or ways of the town which are not within the limits of such designated sewer districts and which are not under the control of the sewer commission.” As a result of the enactment of St. 2008, c.396 (Exhibit 1) and the establishment of municipal sewer districts by Town Meeting (Exhibit 2), the ZBA does not have jurisdiction to extend a municipal sewer district to the Property as the ZBA cannot take the Town Meeting action that is mandated by the General Court as required in order to extend a municipal sewer district. Zoning Board of Appeals of Groton v. Housing Appeals Committee, 451 Mass. 35, 41 (2008)(G.L. c.40B provides no authority for the Housing Appeals Committee to override the requirement for town meeting authorization as established by the Legislature.)

Since the Property is not located in a municipal sewer district or a needs area and the ZBA does not have jurisdiction to take the legislative action necessary to include the Property within a sewer district, the Project cannot connect to municipal sewer without future legislative action. Since the Project proposes to site 4 residential buildings, a pool, a clubhouse, 100 parking spaces and access ways on 2.5 acres of land, the Property is not feasible without access to municipal sewer, so any grant of a comprehensive permit should be conditioned upon the requirement that the Applicant seek and obtain the necessary legislative action to add the Property to a municipal sewer district.

- (2) **Sewer Costs.** If the Property obtains the legislative action needed to be included in a sewer district, the Applicant should be required to pay attendant sewer connection costs and fees.
- (3) **Water Infrastructure.** The Property is not served by municipal water and an on-site well appears not to be feasible and if municipal water infrastructure is

extended to the Property to serve the Project, the Applicant should be required to pay all attendant water connection costs and fees.

- (4) **Wellhead Protection District Issues.** The Property is located in the Lower Nantucket Wellhead Protection District (DEP Zone II) and, during the public hearing, all of the requirements in Zoning By-law (“ZBL”) §139-12B should be carefully examined and the Project and any waivers requested for the Project should be specifically and carefully peer reviewed.

The Board of Selectman urges that the Zoning Board of Appeals not grant any waiver of any requirement that is designed to protect local and municipal water supplies.

- **ZBL §139-12B.2(q):**

Since the Project proposes impervious surfaces for 70% of the Property, the Zoning Board of Appeals must carefully review this proposal in light of the prohibitions and requirements set forth under ZBL §139-12B.2(q), which prohibits any land use in this district, including all buildings and accessory structures, that would result in impervious surfaces of more than 2500 s.f. or 15% of a lot, whichever is greater, unless an a system for artificial recharge of 95% of annual precipitation is provided that will not result in the degradation of groundwater quality.

Specifically, under ZBL §139-12B.2(q), the Zoning Board of Appeals may and should require the Applicant to provide evidence of groundwater protection, including the history of treatment effectiveness of the proposed design/treatment technology proposed and may require monitoring of on-site, pre-and post-development ground water quality for potential pollutants.

- **ZBL §139-12B.3(a):**

A determination must be made as to whether the Project triggers the thresholds would result in the requirement for a water compliance finding under ZBL §139-12B.3. That determination should be made in consultation with the Wannacomet Water Company. If the Project triggers the requirement for the finding, then the finding must be made, either by the Zoning Board of Appeals under G.L. c.40B, in consultation with the Wannacomet Water Company, or, if the applicant agrees, the Applicant could go directly to the Wannacomet Water Company for the review.

- **ZBL §139-12B.3(c):**

Since the Project proposes a new nonconforming use for the Water Protection District, the Project should undergo the review required under ZBL §139-12B.3(c), with the Zoning Board of Appeals acting for the Planning Board, to

make the finding that Project shall be constructed and managed in a way that will eliminate threats to the aquifer through the proposed life of the use and structures proposed. While the special permit requirement does not apply under G.L. c.40B, the Zoning Board of Appeals should impose any conditions that are reasonably necessary to protect the integrity of the aquifer..

(5) **Public Safety Issues:**

A. Police Issues

All of the safety design issues raised by the Police Chief must be carefully considered. A peer review consultant trained in Crime Prevention Through Environmental Design should be hired to review the design of the Project to make sure that appropriate measures to protect the safety of the future residents and area residents. A copy of the Chief's comments is attached hereto.

As noted by the Chief, landscaping should be carefully designed to provide appropriate screening for the Project, which proposes great density, without creating opportunities for acts of violence to occur. Similar, all entrances and all internal hallways should be carefully designed to promote the safety of the future residents.

In particular, each common element of each residential unit (i.e., floors, ceilings and walls that are shared with an adjacent unit) should be carefully designed and built to provide noise and vibration controls, to protect the quality of life of the residents and prevent conflicts between and among the residents in such a dense development.

In particular, the parking requirement under ZBL §139-18. of one space per bedroom should not be waived as inadequate parking can and will create public safety issues, as noted by the Chief. We note that the Project proposes to devote a large amount of ground area to an outdoor pool, which will reduce the available space for parking. Modifications to the Project must be required to provide for the required parking.

In particular, there must be on site recreational opportunities for children. The main form of recreation is a large outdoor pool area that will be available for recreation purposes only during a short portion of each calendar year. Only a very small play area is proposed. As noted by the Chief, the Project needs to provide areas where effective year-round recreation can take place. The children at the Project will need to be able have paved areas where balls can be bounced and grassy areas where balls can be tossed and a safe area for bike riding.

B. Fire Issues

As noted by the Fire Chief, the Zoning Board of Appeals must make sure that all of the requirements of the new fire code (i.e., 527 CMR 18) are fully peer reviewed and fully satisfied. A copy of the Chief's comments is attached hereto.

Proper access for fire safety vehicles absolutely must be provided in order to protect both the future residents of the Project and the Town's public safety personnel. Failure to provide proper access to buildings will increase response time and allow dangerous conditions to develop that otherwise would be avoided.

The following issues must be carefully peer reviewed and the Project must be carefully conditions to address those issues:

- Public Emergency Access to the Project and the individual buildings must be provided and confirmed through computer modeling. All of the Chief's concerns about access to the Projects and the individual buildings must be fully satisfied. A copy of his comments is attached hereto.
- All Fire Code requirements shall be adhered to.
- Each parking space must be 22 feet long to avoid overhanging vehicles, as overhanging vehicles impair and slow emergency response efforts.
- There must be appropriate storage for residents' boats, either on site or off site, otherwise storage must be prohibited.
- Trees that will grow to block vertical access for emergency vehicles must be prohibited.
- Internal hydrants must be provided as recommended by the Chief. These hydrants must be required to be in place and charged with water when the framing of buildings begins.

(6) **Design Issues.** As designed the Project is inappropriate

A. Density.

The Town is well aware that 40B's typically exceed local zoning standards; however, the Project is entirely out of character with the surrounding neighborhood. The Project proposes to cover the majority of the Property with buildings, parking areas, access areas, and a swimming pool (which will be unusable for the majority of the year). The application cites 30% open space, the majority of which is unusable as thin strips of ineffective buffer around the perimeter of the property or land shadowed by the bulky buildings. These factors, combined with the lack of buffers for the Project from adjacent residential properties and the massive bulk and height of the buildings proposed, the Project is completely incompatible with its setting. It's worth noting that the proposed scale of the Project, in a more appropriate location, could be acceptable with further design refinements.

The Project is wholly inconsistent with the development concepts established in the Town's 2009 Master Plan, as adopted and in active implementation by the Planning Board, Nantucket Planning & Economic Development Commission, BOS and Town Meeting.

The Applicant asserts (Application p. 32) that the "living space per acre" proposed by the Project is 28,921 s.f. per acre and that this density compares favorably with other "sustainable compact neighborhoods on the Nantucket, as illustrated in Exhibit F to the Application. The neighborhoods, however, that are illustrated in Exhibit F are all located within the Town Overly District and within the Town Sewer District, so they are connected to municipal water and sewer, and are more closely situated to high-density residential and commercial areas, including the downtown and mid-island.

The density for the LUG-2 zoning district in which the Property is primarily located requires a minimum lot size of 80,000 s.f. of area, allows up to two full-size dwellings and one accessory dwelling not exceeding 550 s.f., and a maximum ground cover ratio of 4% is permitted. Assuming full build-out of the Property under existing regulations, there would be three (3) dwelling units totaling 4,341 s.f. of ground cover, and containing approximately 10,853 s.f. of living space (4,341 x 2.5) equal to 1,736 s.f. of "living space per acre." The Project proposes 56 dwelling units totaling 24,676 (22.7%) s.f. of ground cover, and containing approximately 72,303 s.f. of living space, equal to 28,921 s.f. of "living space per acre". The Project includes 53 more dwelling units, 5.68 times as much ground cover, 6.66 times as much living space, and 16.66 times as much "living space per acre" as would be allowed under existing LUG-2 regulations.

Furthermore, only 100 parking spaces are proposed for 122 bedrooms, which is insufficient; and 122 are required and needed. The Project proposes a large area of the Property to be devoted to an outdoor pool area that would provide no benefit during most of the year to the residents. The Project needs to be redesigned to provide more parking and increase reasonable, year-round recreational, on-site opportunities and the density should be reduced.

B. Height.

The height of the buildings proposed for the Project is wholly inappropriate for a rural Nantucket setting.

The Zoning Bylaw provides that no building (with limited exceptions in very specific and limited sections of Nantucket that are reserved for dense development) shall exceed 30 feet.

The Project proposes 4 residential buildings with a height of 44 feet and a fourth building with a height of 55 feet. This is totally out of character for Nantucket, generally, and should not be allowed. With the exception of utilitarian structures

such as municipal or airport or other institutional buildings, fuel tanks, radio towers, and lighthouses, the only examples of commercial or residential buildings that are similar in scale are located within the downtown and mid-island commercial areas.

C. Aesthetics.

The Project design is historically and contextually inappropriate and inconsistent with the well established guidelines of the Historic District Commission entitled “Building with Nantucket in Mind”.

The Project design resembles a dated, oversized resort that would typically be located in a highway oriented commercial strip on the mainland, accented with an oddly located pool at the center. In fact, it is exactly the type of development that the Country Overlay District specifically seeks to discourage and is contrary to the vision articulated throughout the Master Plan. The Project maximizes the use of three story balconies, a design feature which is unprecedented on Nantucket; and, furthermore, the balconies are located in such a way that they loom over adjacent residential properties and the Boy Scout Camp. There is no historic precedent for such a grouping of large scale buildings at an inland location.

In addition, two buildings would be within 10.6 feet of the front yard lot line and this is inappropriate in a location where the required front yard setback is 35 feet. The minimum side yard setback required is 15 feet; however, the proposed setback is as close as 5 feet and the dumpster appears to be located less than five feet from the lot line and in many places the setback from paved areas is less than five feet.

D. Town and Country Overlay District and 2009 Master Plan.

The Project is wholly inconsistent with the Town’s Zoning and 2009 Master Plan.

Nantucket’s 2009 Master Plan was adopted by the Planning Board pursuant to MGL Chapter 41 section 81D. It was accepted by the Nantucket Planning & Economic Development Commission, Board of Selectmen and Town Meeting (Article 26). The Master Plan was intended to be a 10 year document and it is actively referenced in over 100 zoning articles presented to Town Meeting over the past 6 years. There has been an effort to coordinate utilities with the zoning districts and to focus development around commercial nodes identified in Figure 15 of the 2009 Master Plan (page 46).

The Town and Country Overlay District concept was adopted by Town Meeting in 2001. In 2006 it was the subject of a survey distributed with the Annual Town Census. A total of 86% of respondents supported the creation of standards consistent with the Town and Country concepts. A non-binding 2006 ballot question was supported by 72% of the voters to “work to adopt additional

standards consistent with the Town and Country concept”. In 2009, as part of the Master Plan, zoning was re-structured for consistency with these organizational principles which affect the long-term physical development of the island.

The Country Overlay District, under Section 139-12F of the Zoning Bylaw, has the following purpose:

“The purpose of the Country Overlay District is to discourage development and to preserve areas characterized by traditional and historic rural land use patterns; to discourage the spread of disperse development patterns that promote automobile dependency, and are costly to maintain. The purpose of the Country Overlay District shall be considered by the Planning Board or Zoning Board of Appeals when determining the character and extent of site and infrastructure improvements to be required in a decision on an application for site plan approval...”

Conversely, the purpose of the Town Overlay District is to limit the spatial extent of growth by encouraging development where existing infrastructure exists or can be extended without undue expense and to create affordable housing opportunities through infill development, and to create development patterns that are conducive to alternatives to the automobile.

The Project location is wholly out of character for Nantucket, generally, and the Zoning Board of Appeals needs to work with the Applicant to have the Project redesigned and reduced.

(7) **Other Important Issues.**

The Applicant must be required to analysis of pre and post-construction conditions and pre and post-construction drainage calculations and that a qualified professional engineer provides a report that compares and analyzes the pre and post construction conditions for the Property and all adjoining land and all relevant watershed areas.

The Applicant must be required to provide full stormwater drainage calculations (pre and post construction) to the ZBA and they shall be subjected to peer review at the Applicant’s expense.

If the Applicant proposes to use pervious pavement for walkways and parking areas, then that, of course, could mitigate stormwater runoff concerns; however, if that approach is contemplated, there must be a proper operation and maintenance plan that provides for maintaining the pervious pavement, which would be a significant annual expense.

The Applicant must be required to provide drainage information for peer review that shall:

- a) be supported by adequate testing of the Property's soils, both as to percolation and permeability rates, and the location of seasonal high ground water levels;
- b) be required to undergo peer review by a drainage consultant hired by the Town at the Applicant's expense;
- c) be confirmed through peer review, before any approval can take place, to result in no net increase in the volume and rate of stormwater runoff from the Property, based upon drainage calculations that compare pre-construction and post-construction conditions;
- d) be confirmed, in particular, through peer review, to not result in any increase in the rate or volume of stormwater runoff from the Property or any change in the runoff from existing adjoining properties, when pre-construction and post-construction conditions are compared;
- e) include water control runoff from roofs of the dwellings and any accessory structures that are separate from and not combined with stormwater runoff from paved areas and not be introduced into any stormwater drainage basin;
- f) include operation and maintenance and replacement requirements for the access ways and stormwater drainage infrastructure; and

The Project must be required to include a sidewalk (at the Applicant's expense) to allow the future residents to reach the nearest bus stop to allow safe access for residents.

The dumpster must be located so as to not disturb any adjacent residential property.

The Applicant must be required to provide a detailed trash removal and recycling plan that identifies the frequency of trash pickup, the dumpster locations, all trash policies and enforcement procedures.

The Applicant must be required to obtain and provide a report that provides an estimate of the anticipated school aged children in the Project, so that the Town can plan ahead to serve the children.

The Project must be conditioned so as to eliminate all balconies, which are entirely inappropriate.

If a connection to the water system is allowed, the Applicant must be required to perform all water capacity tests to verify and demonstrate that the Project will not adversely impact the public infrastructure or reduce the water pressure available to existing water users.

The Project should be designed and built so as to maximize energy efficiency in terms of building materials and heating and other infrastructure. That would reduce the cost to the residents and should not greatly increase the Applicant's costs to undertake the Project.

The Project must include internal and off-site sidewalk improvements so as to facilitate pedestrian access to nearby neighborhoods and public transportation facilities. Sidewalks should be constructed of brick, concrete or asphalt (or a combination thereof) and meet AASHTO standards where appropriate.

The Project must have adequate snow storage areas and a snow removal policy that provides for removal in the event of large or repetitive snow events.

We understand the Project will have sprinklers.

The Applicant must perform a traffic infrastructure study, which includes sight distance assessments, to evaluate any improvements that would be required to serve the traffic the Project proposes. This study, given the number of residents proposed to reside in the proposed development, must include an assessment of access to nearby commercial, community, and public transportation facilities. The Traffic Study must take the high tourist seasons into account and include the conflicts that arise from the high number of vehicles, pedestrians and bikers that compete for use of Nantucket's ways and the impact of proposed access points on existing residents and commercial property owners. The Applicant must be required to pay for traffic peer review.

The Applicant must provide a lighting plan, to provide safe lighting for residents, but without light intrusion onto adjacent properties.

The Board of Selectmen thanks the Zoning Board of Appeals for its hard work on this important matter..

Very truly yours,

Robert R. De Costa, Chairman

Matt Fee, Vice Chairman

Rick Atherton

Tobias Glidden

Dawn E. Hill-Holdgate

cc: Police Chief
Fire Chief

Director of Planning and Land Use Services
Town Counsel
Surfside Commons, LLC c/o Atlantic Development

551859/NANT40B/0005

Monday, April 11, 2016 Planning Board Packet

From: [Libby Gibson](#)
To: [Erika Mooney](#)
Subject: FW: 106 Surfside BOH Comments
Date: Friday, March 25, 2016 8:16:08 AM
Attachments: [20160325074312326.pdf](#)

Pls put in 4/6 agenda file

C. Elizabeth Gibson
Town Manager
Town of Nantucket
(508) 228-7255

-----Original Message-----

From: Roberto Santamaria
Sent: Friday, March 25, 2016 7:44 AM
To: Eleanor Antonietti
Cc: Libby Gibson
Subject: 106 Surfside BOH Comments

Good Morning,

At yesterday's Board of Health meeting. The Board voted by unanimous consent to present the attached letter as their comments for the 40B project proposed at 106 surfside road.

Let me know if you have any questions.

Best Regards,
Roberto

Roberto J. Santamaría
Director of Health
Nantucket Health Department
508-228-7200



Monday, April 11, 2016 Planning Board Packet

NANTUCKET HEALTH DEPARTMENT

3 EAST CHESTNUT STREET
NANTUCKET, MASSACHUSETTS 02554

Telephone 508.228.7200
Tele fax 508.325.6117

Date: March 17, 2016

To: Eleanor Antonietti, Zoning Administrator, Land Use Specialist

From: Malcolm MacNab MD, PhD, Nantucket Board of Health

Re: Comments for Surfside Commons 40B, 106 Surfside

The Nantucket Board of Health has reviewed the request of January 21, 2016 by the Zoning Board of Appeals for comments on a proposed 40B development located at 106 Surfside Road in Nantucket, MA referred to hereafter as "Surfside Commons".

The Nantucket Board of Health does not have oversight over the construction of Surfside Commons as long as all applicable rules and regulations of the Board of Health pertaining to this development are followed. Furthermore, the Nantucket Health Department will be available for all permitting and technical commentary required with the necessary permitting of this development.

If you have any further need for comment, please feel free to contact the Board.

Sincerely,

Malcolm MacNab MD, PhD

Monday, April 11, 2016 Planning Board Packet
WANNACOMET WATER COMPANY



Nantucket Water Commission

Nelson K. Eldridge
Allen Reinhard
Noreen Slavitz

Robert L. Gardner
General Manager

1 Milestone Road
Nantucket, MA 02554

Telephone (508) 228-0022
Facsimile (508) 325-5344
www.wannacomet.org

Memorandum

To: Eleanor Antonietti, Zoning Administrator

Via E-mail

From: Bob Gardner, General Manager 

RE: Proposed Surfside Commons 40B, 106 Surfside Road

Date: March 30, 2016

Eleanor, Thank you for providing the relevant materials for the above referenced project and arranging for the site visit yesterday. After reviewing the materials submitted by the Applicant Wannacomet Water Co. offers the following comments to the Zoning Board of Appeals.

1. **Water Service:** As the Applicant has stated, to provide water service to the site the water main will have to be extended from the intersection of Surfside and Fairgrounds Road. Wannacomet will require that the design of this water extension as well as the design of the water supply system within the project be submitted to WWCo for approval. However, at a minimum the new water main to be installed on Surfside Road shall be sized at 12" with fire hydrants every 500 feet. Although, the Fire Chief should be consulted on the number and location of hydrants particularly within the site. The new water main must be extended to the southerly property line and a valve left to facilitate any future extension without interrupting water service to the existing customers. All materials must be approved by Wannacomet Water Company before installation.
2. **Metering:** Wannacomet has looked at several different metering scenarios for this project as well as other similar projects and we have decided on the following metering scheme. We will require that each building have a single master meter owned and maintained by WWCo. We re requesting that the developer provide a suitable location within each building to house the meter. That will be the meter from which the monthly billing will be arrived at. The responsible party for the bill shall be either the developer or a homeowner's association. Should the developer wish to install sub-meters to determine the water use by individual unit we have no objection to that. However, those meters will not be owned or maintained by WWCo.
3. **Wellhead Protection District:** This project is within the Wellhead Protection District as defined in §139-12 of the Town of Nantucket Zoning By-laws. Therefore, upon request, and only upon request, from the ZBA the WWCo will be required to issue or deny a Certificate of Water Quality Compliance (CWQC). I have reviewed the drainage

ZBA Memorandum; Surfside Commons
March 30, 2016; page 2

calculations provided by the Developer and concur with their findings. However, prior to the issuance of a CWQC we will need to review the stormwater collection, treatment and recharge structures. I also, reviewed the inspection and maintenance plan for the stormwater system and find it to be acceptable and commend the applicant on including it with his submittal.

4. **Fees and Waiver Requests:** The Nantucket Water Commission has reviewed the requested waiver to local regulations as outlined in the submittal to the ZBA. The Applicant has requested the following two waivers from the Water Commission.
 - a. **Relief from Zoning By-law §139-12:** This Zoning By-law established the Wellhead Protection District and requires the Nantucket Water Commission acting through the Wannacomet Water Company to issue a Certificate of Water Quality Compliance when so requested by a permitting agency when the application triggers the threshold requirements outlined in the By-law. Therefore, the Water Commission cannot waive the requirements that trigger the need for a CWQC. However, The Wellhead Protection District Zoning By-law is one of the most significant tools for protecting the aquifer and should the ZBA waive that requirement the Water Commission will certainly exercise whatever options are available to the Commission to contest such a waiver.
 - b. **Waiver of the Water Connection Fees:** The connection fee to the existing system is \$5,000 and will not be waived by the Water Commission. The current connection fee for a 1" meter installed inside the living unit is \$1,600.00. Thus, the connection fee for the 56 living units and the single connection for the Clubhouse would be \$91,200.00 plus the \$5,000 for connecting to the existing system for a total fee of \$96,200. However, under the meter scenario that we described in Number 2 above the connection fee would still be \$5,000 for connecting to the existing system but the connection fees for the living units and clubhouse would be \$7,600 per building (5) for a total connection fee of \$38,000. Thus the total connection fees for the living unit buildings and the clubhouse would be \$43,000.

The bottom line is that the Water Commission is not going to waive any of the current fees regardless of the methodology used to compute the fees. All fees must be paid before the connection is made to the existing system.

Thank you for the opportunity to submit these comments and the Water Commission and Wannacomet Water Company will be present at the hearings.

V. REQUESTED WAIVER TO LOCAL REGULATIONS

Updated version April 6, 2016

The Applicant seeks waivers from the Nantucket’s local bylaws and rules and regulations as indicated in the below chart.

The Applicant also requests that waivers be granted from any requirement that the Applicant apply to Nantucket or other municipal boards, commissions, or departments, including, but not limited to, the Public Works Department, Water Commission, Health Department, Historic District Commission, Board of Selectmen, Conservation Commission, Planning and Economic Development Commission, Wannacomet Water Company and Planning Board, if normally required; and the Applicant requests that the Comprehensive Permit be issued in lieu of all of the permits required by the aforementioned boards, commissions and departments, including but not limited to the authorizations of permits and approvals otherwise required to extend and connect to the municipal sewer system and to the water system (whether pursuant to Chapter 396 of Acts of 2008 (the “Act”) or otherwise).

If in the course of the hearings it is determined that there are other local bylaws and rules and regulations that would otherwise be applicable to the Project that have not been requested in this application, the Applicant reserves the right to so amend the Requested Waivers.

WAIVERS REQUESTED FROM THE: TOWN OF NANTUCKET, MASSACHUSETTS CODE, AS AMENDED THROUGH APRIL 6, 2015.

<http://ecode360.com/NA0948?needHash=true>

Surfside Commons

Sewer and Wastewater Facilities	Requested Waiver
<u>Section 120-1. Payment for use of drains and sewers:</u> Requires a person who enters his/her particular drain onto a main drain or common sewer, or who by more remote means receives benefit thereby for draining his/her land or buildings to pay certain fees.	Waiver to exempt Applicant from the requirement to pay fees.
<u>Section 120-6. Sewer privilege:</u> Requires charges to certain owners of land.	Waiver to exempt Applicant from the requirement to pay charges.
Signs; Satellite Dishes; Rooflines	Requested Waiver
<u>Section 124-1. Approval required:</u> The erection or display of an occupational or other sign exceeding two feet in length and six inches in	Waiver from required HDC approval of the sign shown on Applicant’s attached plans.

width on any lot must be approved in advance by the Historic District Commission (“HDC”).	
Section 124-7. A. Restrictions: No residential structure roofline shall exceed 50 feet in horizontal length per elevation.	Waiver to allow Applicant’s roofline up to 150 feet in horizontal length per elevation.
Section 124-8. Construction conditioned on approval: No building or structure shall be constructed or altered within the Nantucket Historic District in any way that affects its exterior architectural features without issuance of a certificate from HDC.	Waiver to allow construction without issuance of a certificate from HDC.
124-9. Permit for razing required: No building or structure within the Historic Nantucket District shall be razed without first obtaining a permit approved by HDC.	Waiver to allow razing of existing building on the Project site without issuance of a certificate from HDC.
Streets and Sidewalks	Requested Waiver
Section 127-1. Permit required: No person, except in an emergency may contract for, or make any excavation or alteration of any public way, sidewalk or bicycle path without first having received a permit for such alteration or excavation from the Town of Nantucket Department of Public Works and the Board of Selectmen	Waiver to allow excavation and alterations in public ways, sidewalks and bicycle paths to install improvements, including, but not limited to, utilities and connections from the Project to such areas.
Chapter 136. Wetlands	Requested Waiver
Section Chapter 136-3. Wetlands: No person shall commence to remove, fill, dredge, alter or build upon or within any area located within the geographic boundaries of the habitat for rare/significant wildlife and/or fauna without filing written application for a permit.	Waiver from the requirement to submit a written application and receive a permit to the extent otherwise required for the Applicant to remove, alter, or build in any habitat for rare/significant wildlife and/or fauna on the Project site.
Zoning Bylaw	Requested Waiver
Section 139-7 B. Use chart; prohibited uses in all districts: The Use Regulations do not permit Apartment Buildings in the LUG-2 and LUG-3 zones, do not allow more than one Apartment Building per lot and limit Apartment Buildings to a maximum of 8 units. In addition, the following uses are prohibited:	Waiver to allow multiple Apartment Buildings per lot within the LUG-2 and LUG-3 Districts with the number of dwelling units as permitted as part of the Comprehensive Permit.

<p>(1) More than two dwellings or dwelling units per lot except as otherwise allowed in this chapter. (2) Use of a trailer or a building-like container for residential purposes.</p>	<p>Waiver to allow the use of trailers or building-like containers for residential purposes.</p>
<p>Section 139-12 B. Overlay Districts The Public Wellhead Recharge District: Prohibits (i) uses not allowed in underlying zoning and (ii) all land uses, buildings, and accessory structures, that result in rendering impervious more than 15% or 2,500 square feet of any lot, whichever is greater.</p> <p>Requires mandatory referral to, and review by, Nantucket Water Commission prior to issuance of any permit and prohibits issuance of building permit or special permit unless a finding has been issued therewith, and the conditions, if any, of such finding are incorporated in said permits.</p>	<p>Waiver to allow all uses not permitted in the underlying zoning and to allow land uses, buildings, and accessory structures, that result in rendering impervious more than 15% or 2,500 square feet of the Project's lot, whichever is greater.</p> <p>Waiver from referral requirement.</p>
<p>Section 139-16 A. Intensity regulations: The applicable intensity regulations are as follows:</p> <p>LUG-2</p> <ul style="list-style-type: none"> • Frontage: 150' • Max ground cover ratio: 4% • Min Lot size: 80,000 sf • Front yard: 35' • Side yard: 15' • Rear yard: 15' <p>LUG-3</p> <ul style="list-style-type: none"> • Frontage: 200' • Max ground cover ratio: 3% • Min Lot size: 120,000 sf • Front yard: 35' • Side yard: 20' • Rear yard: 20' 	<p>Waiver to the extent the provided dimensional requirements do not meet the intensity regulations.</p> <p>Provided dimensional requirements:</p> <p>Frontage: 342' – COMPLIES Max ground cover ratio: 77% - WAIVER Min Lot size: 108,528 sf - COMPLIES Front yard: 10' - WAIVER Side yard: 15' - COMPLIES Rear yard: 48' – COMPLIES</p> <ul style="list-style-type: none"> • Frontage in LUG-2 - COMPLIES • Ground cover ratio 70% - WAIVER • Lot size: 108,528 SF- WAIVER • Front yard in LUG-2 zone - WAIVER • Side yard: n/a no portion of building in LUG-3 • Rear yard: n/a no portion of building in LUG-3
<p>Section 139-16 A. D. (1) Intensity regulations</p>	<p>. Intensity factor is 0.98 - COMPLIES</p>

Regularity Formula: The regularity factor of any lot shall not be less than 0.55.	
Section 139-17 Height limitations Country Overlay District: Maximum Height of 30'.	Waiver from height limitation to proposed height of 55' - WAIVER
Section 139-18 (6) Off-street parking requirements: Head-in, ninety-degree parking spaces and forty-five-degree parking spaces shall not be less than nine feet in width and 20 feet in length.	Waiver to allow parking spaces of 18' in length
Section 139-19. Screening of parking areas, driveways and off-street loading facilities: Requires screening of parking areas and a special permit to waive such requirements.	Waiver to exempt the Project from the parking screening requirements and substitution of a 4' privacy fence. Waiver from the requirement for the issuance of a special permit for such exemption
Section 139-20.1. B. Driveway access, Regulation of driveway access: Requires Nantucket Department of Public Works approval for new driveway access and compliance with the minimum driveway standards.	Waiver (i) to allow issuance of a new driveway access permit without Nantucket Department of Public Works approval, and (ii) of the required minimum driveway standards.
Section 139-23. Site plan review (SPR)	Waiver from the requirements of Site Plan Review.
Section 139-28 Occupancy permits	Waiver from any requirement for a certificate from HDC.
Section A301-4. Historic District Commission	Requested Waiver
Section A301-4. Historic District Commission	Waiver from HDC review requirements and any requirement for the issuance or non-issuance of approvals or certificates from HDC.
Section A301-12 Sewer Commission and sewer districts.	Requested Waiver
Section A301-12 Sewer Commission and sewer districts	Waiver of requirements for Town Meeting approval for extension of sewer district and Board of Selectmen for extension of the sewer system.
Nantucket Water Commission and/or Wannacomet Water Company	Requested Waiver
Application for Water Service: Requires a fee of \$3,000.00 per 1" installation.	Waiver of the fee.

TO: Nantucket Zoning Board of Appeals
FROM: Goulston & Storrs PC
DATE: April 6, 2016
SUBJECT: Surfside Commons (the "Development")

1. Background

On December 18, 2015, Surfside Commons LLC (the "Applicant") submitted to the Nantucket Zoning Board of Appeals (the "ZBA") an application (the "Application") for a comprehensive permit for a rental development consisting of 56 units (the "Project") pursuant to M.G.L. c. 40B §§20-23 and its implementing regulations at 760 CMR 56.00 *et seq.* (collectively, "Chapter 40B") on a site on Nantucket (the "Town") located at 106 Surfside Road (the "Site"). The Project will be served by the Town sewer system and will involve the extension of the existing sewer line via a new force main to be installed along Surfside Road and Fairgrounds Road. The Site is not currently located in a Town "sewer district" established under Chapter 396 of Acts of 2008 (the "Act"). Among the waivers requested from the ZBA in the Application is a waiver of all requirements of the Act for extension of the Town's sewer district and approval of the Project's connection to the Town's sewer system (the "Waiver"). At the first hearing on the Application on January 14, 2016, the ZBA requested a memorandum from counsel for the Applicant and the ZBA regarding the ZBA's authority to grant the requested Waiver. This memorandum responds to that request on behalf of the Applicant.

2. Summary

Pursuant to Chapter 40B, the ZBA has the authority and the exclusive jurisdiction to grant the Waiver. Both Town Meeting and the Town's Board of Selectmen ("BOS") acting as the Town's Sewer Commission (the "Sewer Commission") are "local boards" as such term is defined in Chapter 40B. Moreover, the Act itself contemplates that projects proposed in the Town under Chapter 40B would not be required to seek either Town Meeting or BOS approval.

3. Summary of the Act's Relevant Provisions

Section 1 of the Act provides in pertinent part that the Town "acting by and through the Nantucket sewer commission may lay out, plan, construct, maintain and operate a system or systems of common sewers for a part or whole of its territory, as may be from time to time defined and established by adoption by town meeting of one or more by-laws as a designated

sewer district under the jurisdiction and control of the sewer commission No other sewers shall be constructed in any public roads or ways of the town which are not within the limits of such designated sewer districts and which are not under the control of the sewer commission.”¹.

The upshot is that under the terms of the Act, in general, if a property in the Town is not located in a sewer district, in order for any improvements on that property to be connected to the Town’s sewer system, two things need to happen: 1) the Town Meeting must vote to create a new sewer district or extend an existing sewer district to include the property; and 2) the BOS must approve the extension and connection of that property to the Town’s sewer system.

However, Section 11 of the Act (“Section 11”) reads as follows:

“Notwithstanding anything to the contrary contained herein, the board having charge of the maintenance and repair of sewers may at any time permit extensions, new connections or increases in flow to the sewer system, subject to capacity, to serve municipal buildings or public restrooms or other public service uses as defined by the municipality; provided, however, that such uses may include, but shall not be limited to, affordable housing constructed pursuant to chapters 40B and 40R of the General Laws, without thereby creating any entitlement on the part of any person to connect to such sewer system, and subject to capacity, in order of application, may permit or if in the public interest, may require, extensions, new connections or new flow to the sewer system within such districts.” (emphasis added)

The legislative history of the Act is instructive as to the meaning and intent of Section 11. As originally filed by the House, Section 11 did not include the clause: “or other public service uses as defined by the municipality; provided, however, that such uses may include, but shall not be limited to, affordable housing constructed pursuant to chapters 40B and 40R of the General Laws” (the “Language”). In an October 9, 2008, message to the House, the Governor stated that as originally written, “the bill raises concerns that affordable housing developments could be denied access to sewer connections”. As a result, the final version of the bill included the Language, which amended version was approved by the House on December 4, 2008, and signed by the Governor on December 17, 2008.

4. Town Meeting and the BOS are “Local Boards” under Chapter 40B.

Under Section 21 of Chapter 40B, a zoning board of appeals has the exclusive jurisdiction to issue a comprehensive permit pursuant to a single application “in lieu of separate applications to the applicable local boards.” The zoning board of appeals shall “have the same power to issue permits or approvals as any local board or official who would otherwise act with respect to such application.”

¹ It is our understanding that the Town has not established an independent sewer commission under the Act, and instead the BOS acts as the Sewer Commission.

Under 760 CMR 56.02, “local board” is defined as:

“any local board or official, including, but not limited to any board of survey; board of health; planning board; conservation commission; historical commission; water, sewer, or other commission or district; fire, police, traffic, or other department; building inspector or similar official or board; city council or board of selectmen. All boards, regardless of their geographical jurisdiction or their source of authority (that is, including boards created by special acts of the legislature or by other legislative action) shall be deemed Local Boards if they perform functions usually performed by locally created boards.”
(emphasis added)

There is no language in the Act indicating that the legislature intended that the Act exclude either Town Meeting or the Town Sewer Commission from the definition of a “local board” under Chapter 40B, the definition of which includes boards of selectmen. As the Supreme Judicial Court found in Dennis Housing Corp. V. Zoning Bd. of Appeals of Dennis, 439 Mass. 71 (2003):

“[t]he ‘local boards’ whose ordinary jurisdiction may be exercised by the [ZBA] under [Chapter 40B] are defined as ‘any town or city board of survey, board of health, board of subdivision control appeals, planning board, building inspector or the officer or board having supervision of the construction of buildings or the power of enforcing municipal building laws, or city council or board of selectmen.’”

Town Meeting and the BOS acting as the Town’s Sewer Commission, whose approval would otherwise be required to extend the Town’s sewer district to include the Site and connect the Project to the Town’s sewer system, are clearly “local boards” under Chapter 40B. This is true even though the Act specifically mandates approval by Town Meeting and the Sewer Commission, because in this regard the Act is a “special act of the legislature” under which the bodies in question are performing “functions usually performed by locally created boards”. It follows that the provisions of the Act authorizing the Town Meeting to approve new sewer districts and extend existing sewer districts, and granting the Sewer Commission the power to permit extensions, new connections or increases in flow to the sewer system are “Local Requirements and Regulations”, as defined in 760 CMR 56.02. These requirements are within the exclusive jurisdiction of the ZBA in the Chapter 40B context. See, e.g. Board of Appeals of Wilmington v. Wilmington Arboretum Apts. Associates Limited Partnership, 39 Mass. App. Ct. 1106, (Mass. App. Ct. September 8, 1995), with Judgment after Rescript dated October 24, 1995.

5. Specific Language of Section 11 of the Act

The language of the Act itself provides further support that the ZBA has the exclusive authority to grant approval for the sewer extension to serve the Project. As quoted above, Section 11 states that “the board having charge of maintenance and repair of sewers” may grant

approval for extensions to serve public service uses, specifically including “affordable housing constructed pursuant to chapter[] 40B”. Based on the definition of “local board” and the relevant case law referenced above, there can be no doubt that the “board having charge of maintenance and repair of sewers” is a local board. Therefore, this board’s authority is subsumed within the ZBA’s authority under Chapter 40B. It inexorably follows that the comprehensive permit issued by the ZBA is the sole approval necessary to connect the Project to the Town’s sewer system.

6. Conclusion

Under Chapter 40B, the ZBA has the exclusive jurisdiction and authority to allow the Project to connect to the Town’s sewer system by issuing a comprehensive permit. No other approval is required, neither from the Town Meeting to create a new sewer district or extend the existing sewer district, nor from the BOS acting as the Sewer Commission to connect to the Town’s sewer system. Nothing in the language of the Act conflicts with this, and in fact, Section 11 of the Act confirms this conclusion. Any other conclusion would result in the ability of the Town to stymie any Chapter 40B project proposed to be undertaken in the Town outside a current sewer district, which would be in direct conflict of the purposes of Chapter 40B “to reduce regulatory barriers that impede the development of [affordable] housing.”