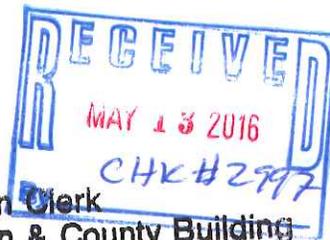




#28-16 Nantucket Theatre Project LLC
5 North Water Street
Map 42.4.2 Parcel 88
Modification to a Previously Granted Special Permit





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

Handwritten signature

MAY 13 2016 AM 9:56



Nantucket Planning Board

Application for a Special Permit

Date: 5/10/16 _____ File #: 28-16

Name of development: _____

Owner(s) name(s): NantucketTheatreProjectLLC _____

Mailing address: c/o Cohen & Cohen Law PC, PO Box 786, Nantucket MA 02554 _____

Phone number: 508-228-0337 _____ Fax number: 508-228-0970 _____ E-mail: Steven@CohenLegal.net _____

Applicant's name: SAME _____

Mailing address: SAME _____

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

Engineer / surveyor's name: Nantucket Surveyors - Paul Santos _____

Mailing address: 5 Windy Way, Nantucket MA 02554 _____

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

Location of lot(s):
 Street address 5 North Water Street _____

Nantucket Registry of Deed: Plan Book 10 _____ and Page 49 _____ **OR**

Plan File # _____ **OR** Land Court Plan # _____ at Certificate # _____

Tax Assessors Map 42.4.2 _____ Parcel 88 _____

Size of parcel: 8070SF _____ 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)

Nantucket Planning and Land Use Services ■ 2 Fairgrounds Road ■ Nantucket ■ MA ■ 02554 ■ (508) 325-7587

- 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
	<i>Alter Site Plan</i>

Specify all associated Zoning Code relief sought:

Section	Description

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:

Planning Board filing fee due: \$ 250 + \$274

Engineering Inspection Escrow Deposit due: \$ _____

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.

Nantucket Planning and Land Use Services ▪ 2 Fairgrounds Road ▪ Nantucket ▪ MA ▪ 02554 ▪ (508) 325-7587

Owner(s)' Signature(s)

Applicant's Signature

Steven Cohen

STEVEN COHEN KS 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 \$6.11 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)

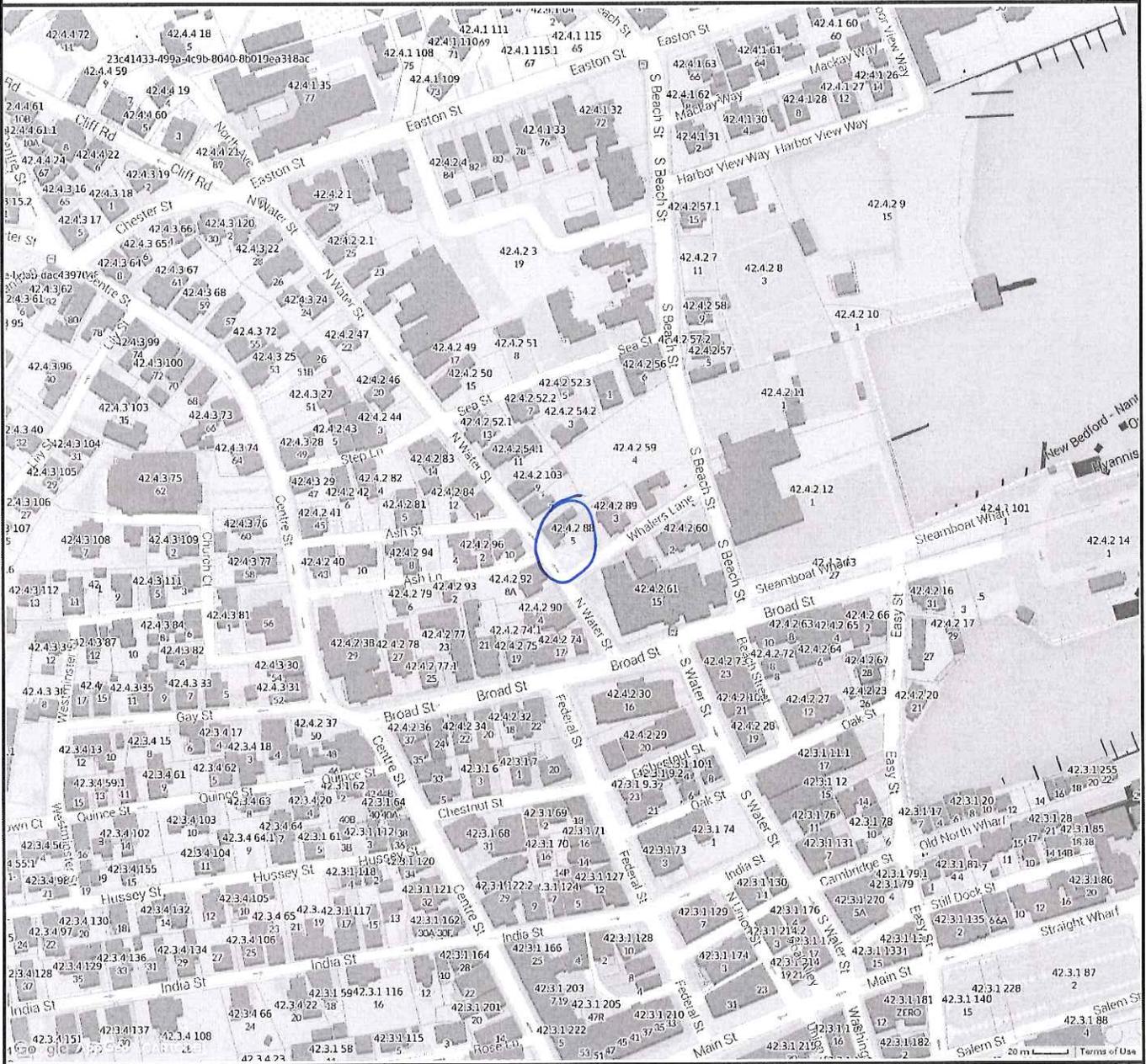
**MCD Special Permit Addendum
5 North Water Street**

**Nantucket Theatre Project LLC, Owner/Applicant
See Deed at Nantucket ROD Book 1475, Page 171**

The locus, 5 North Water Street, Nantucket, Massachusetts is a conforming lot of approximately 8070 SF in the Commercial Down Town zoning district (CDT). On May 13, 2013, the Nantucket Planning Board, issued Major Commercial Development Special Permit No. 10-14, which was recorded at the Nantucket Registry of Deeds at Book 1388, Page 342, and was modified at Book 1466, Page 333, at Book 1493, Page 39 and at Book 1493, Page 42.

The locus is under construction as a non-profit theater and theatre institute. Due to a delay in the manufacturing of the elevator, it will not be available for delivery until mid-summer, at the soonest. In order for the White Heron Theater to have a season this summer, it cannot wait until the elevator is delivered and installed. However, all of the bathrooms for the public are in the basement, so handicapped persons would not be able to access them without the elevator. To be able to open for the summer and also provide accessible rest room facilities, the applicant proposes to place a portable unit, the box trailer type (i.e., not the plastic latrine type) in the open area of the property temporarily, from June through October of 2016. This facility would only be for one season and would be open to the public during business hours.

To install this accessible facility temporarily and to obtain a temporary Certificate of Occupancy, the Applicant is also seeking approval from the Architectural Access Board and the HDC. Applicant seeks approval from the Planning Board to modify the approved site plan for this temporary structure and for approval to operate under a Temporary Certificate of Occupancy. The portable facility would be placed in the court yard and will comply with setbacks. The CDT zone allows 75% Ground Cover Ratio, but even with the portable rest room the lot will be complaint, so no Ground Cover Ratio waiver is needed. The premises current has a limited waiver of the open requirement, but the 2016 Annual Town Meeting eliminated the open space requirement for the CDT district, so that is not an issue.



Property Information

Property ID 42.4.2 88
Location 5 N WATER ST
Owner NANTUCKET THEATRE PROJECT LLC



MAP FOR REFERENCE ONLY
 NOT A LEGAL DOCUMENT

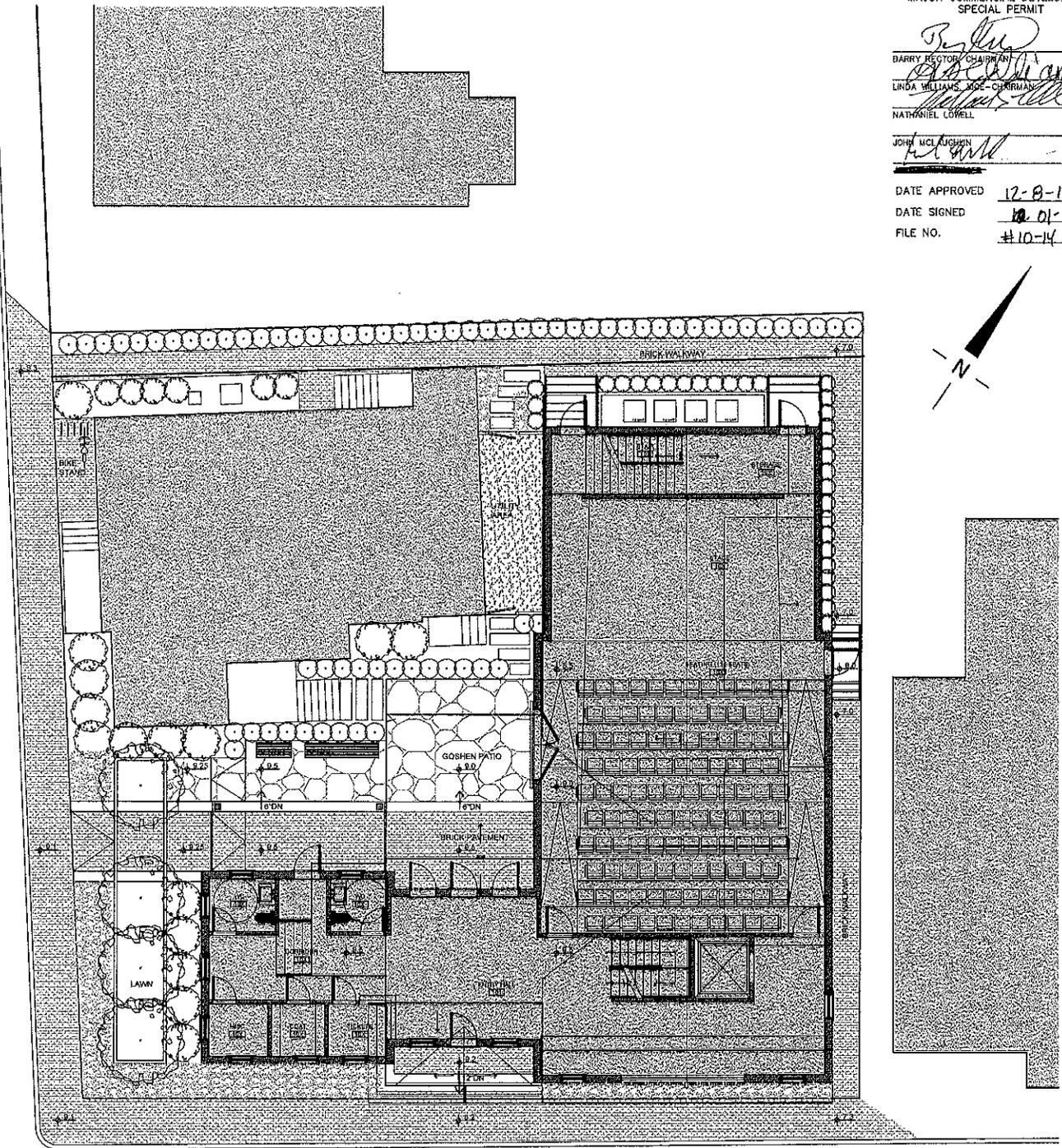
Town and County of Nantucket, MA makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Parcels updated December, 2014
 Properties updated January, 2015

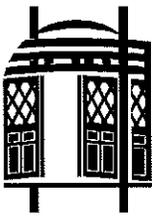
[Signature]
 BARRY HECTOR, CHAIRMAN
[Signature]
 LINDA WILLIAMS, VICE-CHAIRMAN
[Signature]
 NATHANIEL LOWELL

JOHN UGLAUGHEN
[Signature]
 DATE APPROVED 12-8-14
 DATE SIGNED 10-01-09-15
 FILE NO. #10-14

NORTH WATER STREET



WHALERS LANE



ASSOCIATED ELEVATOR COMPANIES, INC.

May 10, 2016

Andersen Company LLC
PO Box 867
Siasconset, MA 02564
Attn: Scott Andersen

RE: 5 No Water St, Nantucket, MA

Scott,

Due to the major increased work load imposed on the elevator industry including new installations and modernization of existing elevators, **engineering and manufacturing leads times have doubled above standard lead times** including the availability of qualified licensed elevator technicians to furnish and install all elevator related equipment.

That said the elevator for the above referenced project will not be completed in manufacturing till the week of July 11th, 2016.

Allowing 2 weeks for equipment to arrive in Nantucket we would tentatively schedule our licensed elevator installers to commence installation of elevator Monday July 25th, 2016

Please confirm site readiness and allow us to coordinate and tentatively schedule elevator installation Monday July 25th, 2016

Sincerely

ASSOCIATED ELEVATOR COMPANIES, INC.

Brad McClay

Brad McClay, Vice President
Ext. 102

Encl.

ADMINISTRATIVE OFFICES

583 Forest Road, Unit D • P.O. Box 500 • South Yarmouth, MA 02664
508-760-3875 • 800-828-5151 (MA) • 800-422-4922 (RI) • 508-760-2809 FAX
www.associatedelevator.com



2015 00000021

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Nantucket Planning Board

MAJOR COMMERCIAL DEVELOPMENT SPECIAL PERMIT DECISION NANTUCKET THEATRE INSTITUTE, INC.

December 8, 2014

Special Permit #10-14

Applicant / Owner:

The Nantucket Theatre Institute, Inc. / Lynne M. Bolton
c/o Cohen & Cohen Law PC
PO Box 786
Nantucket, MA 02554

for property at
5 North Water Street

Assessor Map 42.4.2 Parcel 88
Plan Book 10, Page 49

GENERAL DESCRIPTION

At public hearings on May 12, 2014, November 10, 2014, and December 08, 2014, the Nantucket Planning Board, considered the application of The Nantucket Theatre Institute, Inc. (hereafter the Applicant) for a Major Commercial Development (MCD) Special Permit under the following sections of the Nantucket Zoning Bylaw: Major Commercial Development (139-11), Open Space (139-11); Inclusionary Housing (139-11); Height (139-17); and Site Plan Review and Traffic Study (139-23):

LOCUS

The locus, 5 North Water Street, Nantucket, Massachusetts is a lot of approximately 8,070 SF in the Commercial Downtown zoning district (CDT) where a minimum lot size of 3,750 SF is required. A two story structure and a pre-existing nonconforming one story structure exist on the lot. The rear of the single story structure is as close as 2.6 +/- feet from the lot line where a 5 foot setback is required. The locus and structures thereon are conforming in all other respects.

The lot is the subject of Special Permit relief granted in ZBA file 73-86 and recorded at Book 260, Page 336, allowing for the change of use from retail to real estate office. The Lot also has Special Permit relief granted in ZBA file 25-92 and recorded at Book 387, Page 113 allowing for an addition to the smaller building (which was not built) and waiving related parking requirements. These ZBA Special Permits would have provided for a total waiver of 14 parking spaces had the second special permit been exercised.

PROPOSAL

Applicant plans to establish a theatre and arts facility at 5 North Water Street. During its planning stages, the Applicant received limited Special Permits and Variances from the Planning Board and Zoning Board of Appeals for use of the locus for such performances, and related practices, education, promotion, administration, housing, and concessions. The permits allowed the use of a tent as a temporary theater for the 2013 and 2014 seasons (see ZBA File 22-13, Variance recorded in Book 1388, Page 241, and extended in File 61-13, and also Planning Board File 5-13, Special Permit recorded in Book 1388, Page 342). Applicant now proposes to remove the small structure and to construct a permanent theater facility, as approved by the Nantucket Historic District Commission. The facility would have a main stage with 150 seats and space for ancillary functions, such as practice, storage, administration, sales, and concessions, as well as public restrooms (when the theater is open). The top floor of will serve as a multi-purpose space for a patrons club, functions, and ancillary arts related activities. The Applicant also proposes to use the facility for collaborations with other arts organizations and for arts education. Applicant proposes hours of operations from 8 am until mid-night, but expects that performances will be much more limited in scope. The existing antique structure will be used for administrative purposes and for staff housing during the peak season (but not rented out for housing to third parties).

Ground Cover

The proposed structure will have a Ground Cover Ratio of 56.8%, but up to 75% is allowed in the CDT district under Section 139-16, so no waiver is needed.

Open Space

The lot currently has forty-two (42) percent open space. However, the proposed development will provide 26.6% Open Space, where 30% is required for an MCD under Section 139-11(G). The Applicant seeks relief from this requirement. The Applicant notes that the site is located within the historic downtown area, where street trees, compact planting beds, window boxes, and climbing vines are appropriate vegetation, and that the site plan provides for a street side courtyard that will be vegetated as well.

Height:

The Applicant proposed to construct a structure with a height of greater than thirty (30) feet. This is allowed under Section 139-17C (5) in the CDT district for historic preservation, or if the structure is complementary and appropriate for the scale of the structures in the area, and is not detrimental to the adjoining properties. Applicant notes that its height of nearly 34 feet has been approved by the Historic District Commission, after significant redesign and consideration in the streetscape.

Street Lighting

The site is located in a moderately lighted area of the downtown, and therefore a substantial amount of lighting is not necessary. Applicant proposed that any exterior lighting would be limited and would be compliant with the Town Code.

Utilities

The existing and proposed structures will be serviced by municipal sewer and water, by existing power and cable lines, and similar. No new overhead lines are planned.

Site Plan

Applicant seeks a waiver for the Site Plan, Drainage, Storm Water Runoff, Landscaping, and other reviews and requirement of Section 139-23. Applicant proposes to recharge roofwater runoff on site and to discharge additional stormwater runoff into the public sewer system, according to the site plan provided. Applicant also notes that although the CDT zoning district provides for zero foot front and side yard setbacks, the proposed structures will maintain access around the property and will provide for open site lines at the corner of Whalers Lane and North Beach Street, as per the site plan.

Traffic

The Applicant seeks a waiver of a traffic analysis and report under Section 139-23, as other reports are available for use. Recent changes to the zoning code have eliminated the requirements for off-street parking and loading zones for the CDT district, so no relief is needed. However, Applicant notes that most access is expected to be by pedestrian traffic and the property is accessible by sidewalk from nearby hotels and restaurants. Further, the locus is close to on-street parking and to the Broad Street drop-off station for the Town's valet parking program. Applicant proposes to provide NRTA bus passes to its on-site employees and to provide a bicycle rack for general use. Applicant proposes to eliminate the existing driveway and to improve the public sidewalk abutting the premises.

Housing:

Applicant proposes to meet the intent of Section 139-11(J) for inclusionary housing by providing a 2 bedroom apartment for its employees in the existing main building. The employee apartment will be not restricted to meet the standards contained within the definition of inclusionary housing.

BASIS OF THE FINDINGS

The Planning Board's findings and decision refer to the following:

- An application to the Planning Board for a Special Permit received December 18, 2013, with its Addendum and site plan;
- The prior special permit(s) and variance relief granted by the Planning Board and the Board of Appeals.
- Representations and testimony received in connection with the public hearings held May 12, 2014, November 10, 2014, and December 8, 2014; and
- Other documents on file with the Planning Board.

FINDINGS

Based on review of this application in accordance with the Nantucket Zoning Bylaw, plans and other materials submitted by the Applicant, and testimony received at the public hearings, the Planning Board finds that:

- The application and proposal substantially comply with the local bylaws of the Town of Nantucket and regulations and/or applicable provisions of the Massachusetts General Laws;
- Public amenities and abutting properties have been adequately protected by the following measures:
 - The improvement of the sidewalk;
 - Provision of public restroom facilities;
 - Limitations on light, noise, and other nuisances;
 - Use of existing utilities and of municipal sewer and water;
 - Operation of a theater on the site; and
 - Landscaping will be installed in appropriate locations on the site.
- Adequate protection of unique natural, scenic, or historic features of the site have been or will be provided by the following measures:
 - Maintenance of the historic main structure on the site.
- Adequate methods for the disposal of stormwater runoff and sanitary wastes and protection of environmental resources, and for the supply of potable water have been provided by the following measures:
 - Surface water runoff overflow will be directed to the municipal stormwater system. A contribution of \$5,000 proposed by the applicant for the cost of future maintenance is adequate, and consistent with similar proposals in the area. There are no unresolved issues regarding sewage and refuse disposal on the record;
 - Sanitary waste and water service are provided municipal service; and
 - Garbage will be collected in an enclosed container and removed from the site daily adequately.
- The proposed building has received a Certificate of Appropriateness from the Nantucket Historic District Commission, is not detrimental to adjoining properties, and does not cast them in shadow or result in the loss of privacy, air circulation, sunlight, safe ingress and regress or overcrowding.
- Impact on traffic and safety upon public and private rights-of-way have been mitigated or improved by the following measures:
 - Elimination of the curb cut on Whalers Lane;
 - Maintenance of traffic site lines at Whales Lane and North Beach Street;
 - Provision of NRTA bus passes for on-site staff; and
 - Provision of a bicycle rack for general use.
- The project will not place excessive demands on Town services or infrastructure. Based on the conditions imposed and the good faith efforts of the Applicant to implement them, the Planning Board finds that no public amenity will be adversely affected;
- The proposed staff apartment is adequate to satisfy the intent of the requirement for inclusionary housing compared to this limited proposed use.

- A height of greater than thirty (30) feet is complementary and appropriate for the scale of the structures in the area, as has been approved by the Historic District Commission, and is not detrimental to the adjoining properties.

DECISION

The Planning Board renders this decision based on compliance with the following sections of the Nantucket Zoning Bylaw: Commercial Downtown (CDT) zoning district (139-9), Major Commercial Development (139-11), and Major Site Plan Review (139-23).

The Planning Board grants special permits for waivers from the following sections of the Nantucket Zoning Bylaw:

- 139-11 G Open space requirement
Special Permit pursuant to Section 139-11 G. (3) to reduce the required open space to an amount less than 30% of the land
WAIVER GRANTED – approximately 26.6% open space will be provided. The proposed landscaping is consistent with the character of other commercially developed properties in the area.
- 139-11 J Inclusionary Units
WAIVER GRANTED – a 2 bedroom apartment for use by staff and/or actors will be located on the second floor of the main structure. This apartment will not be restricted to the standards contained within the definition.
- 139-17 C Height
Special Permit for a height of greater than 30 feet.
WAIVER GRANTED – the proposed structure height of 34 feet is complementary and appropriate for the scale of the structures in the area, as has been approved by the Historic District Commission, and is not detrimental to the adjoining properties.
- 139-23 F Site Plan Review and Traffic Study
Waiver pursuant to 139-23 G. (1) to reduce the information required for site plan review
WAIVER GRANTED – Site plan information provided was sufficient for the Board's review requirements in this location.

Based on the aforementioned findings and waivers, a motion was made and duly seconded and voted 4-0 (with one abstention) to **APPROVE** this Major Commercial Development special permit based on the following conditions:

- 1) That all commercial operations on the site shall not begin before 8 am and shall end by 12 am.
- 2) That patrons shall not queue on the public sidewalk. If queuing on the public sidewalk becomes an issue and the Planning Board determines that action is warranted, the applicant

agrees, upon notification from the Planning Board, to make staff available to direct patrons to an area within the boundary of the site for queuing. A cell phone shall be dedicated to the manager on duty and the number shall be provided to the Planning Board;

- 3) That the concessions on the locus shall only be ancillary to the use of the site for performances and functions on the locus and there shall be no independent restaurant or take-out food on site.
- 4) That there shall be no amplification of any sounds outside of the theater.
- 5) That all garbage shall be stored in closed containers, and removed from the site daily.
- 6) That the residential apartment shall not be rented to parties unrelated to the theater operations and performances.
- 7) That the Applicant shall annually provide Nantucket Regional Transit Authority (NRTA) passes for all on-site employees.
- 8) That the applicant agreed to install a minimum of one (1) bike rack on the site, the location of which shall be shown on the site plan.
- 9) That the new structure shall not be greater than 34 feet in height.
- 10) There shall be no exterior construction on the premises between June 15 and September 15;
- 11) That the final plan set shall include a corner rounding easement at the corner of North Water Street and Whalers Lane. The final plans shall be endorsed by the Planning Board prior to the issuance of any building permits;
- 12) That the applicant shall replace in like-kind the sidewalks, curbing, roadway pavement, or other public infrastructure that is damaged during construction;
- 13) That in the event the Town/County of Nantucket does not accept the easement or any infrastructure “gifts” associated with conditions 11 and 12, above, the applicant shall not be held responsible and the condition shall be deemed to be fulfilled;
- 14) That a pre-construction meeting shall take place prior to the issuance of any building permits; and
- 15) That the applicant agreed to contribute \$5000.00 to the Town or County of Nantucket for the future maintenance of the stormwater system servicing the site.

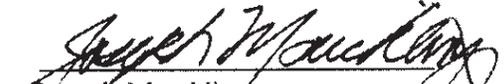
NOTATION: The Applicant noted to the Board that its construction process may require use of a partially constructed facility or use of a temporary structure during the 2015 season. The Board approves this request, the following additional conditions:

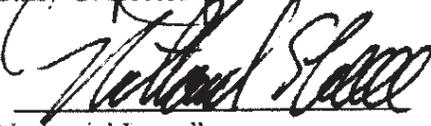
- 1) The temporary use shall not be for longer than from June 16, 2015 until September 14, 2015.
- 2) If a tent is used, no activities shall take place before noon, evening performances shall end by 9:30 pm and all operations on the site shall end by 10:30 pm. Except for entrances/exits, all flaps of the tent remain installed and stay down during performances. Except for background music and sound effects, no electronic sound amplification shall be used for actors or otherwise. Any use of a tent for longer than 30 days shall be pursuant to a variance by the Zoning Board of Appeals.
- 3) The facility shall not have more than 150 seats or be larger or taller than the approved facility.

RECORD OF VOTE

On December 8, 2014, the Planning Board voted 5-0 to **CLOSE** the public hearing and voted 5-0, to **APPROVE** this application and to **ENDORSE** this decision.


Barry G. Rector


Joseph Marcklinger


Nathaniel Lowell


Linda F. Williams

Carl Bochert

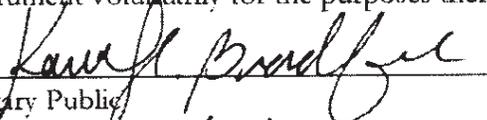
COMMONWEALTH OF MASSACHUSETTS

Nantucket, SS

December 10, 2014

On the 10th day of December, 2014, before me, the undersigned notary public,

personally appeared Barry G. Rector, one of the above-named members of the Planning Board of Nantucket, Massachusetts, personally known to me to be the person whose name is signed on the preceding document, and acknowledged that he/she signed the foregoing instrument voluntarily for the purposes therein expressed.



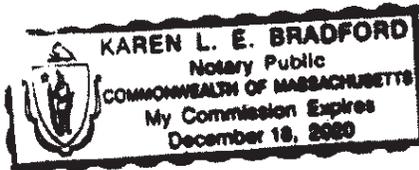
Notary Public

12/18/2020

My Commission Expires

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 71.

JAN 06 2015 TOWN CLERK





ATTEST: A TRUE COPY


NANTUCKET TOWN CLERK

NANTUCKET COUNTY Registry & Entered of Deeds
Attest: Jennifer H. F...



Nantucket Planning Board

RECEIVED
2015 MAR 30 PM 2 53
NANTUCKET TOWN CLERK

**APPROVAL OF MODIFICATION #1
TO SPECIAL PERMIT DECISION #10-14
FOR A MAJOR COMMERCIAL DEVELOPMENT**

NANTUCKET THEATRE INSTITUTE, INC.

Special Permit #06-15

Applicant/Owner: Nantucket Theatre Project, LLC
c/o Cohen & Cohen Law PC
PO Box 786
Nantucket, MA 02554

Property Address: 5 North Water Street

Assessor Map 42.4.2 Parcel 88
Plan Book 10, Page 49

February 19, 2015

GENERAL DESCRIPTION

At a public hearing on February 19, 2015, the Nantucket Planning Board considered the application of The Nantucket Theatre Institute, Inc. (hereafter the Applicant) for a Modification to Major Commercial Development (MCD) Special Permit # 10-14 pursuant to the following sections of the Nantucket Zoning Bylaw: Major Commercial Development (139-11) and Height (139-17).

PROPOSAL

Applicant plans to establish a theatre and arts facility at 5 North Water Street. During its planning stages, the Applicant received limited Special Permits and Variances from the Planning Board and Zoning Board of Appeals ("ZBA") for use of the locus for such performances, and related practices, education, promotion, administration, housing, and concessions. The permits allowed the use of a tent as a temporary theater for the 2013 and 2014 seasons (see ZBA relief granted by Variance in File No. 22-13, recorded in Book 1388, Page 241, and extensions granted in File No.s 61-13 and 06-14, and; Planning Board Special Permit # 05-13, recorded in Book 1388, Page 342 and Special Permit # 01-14). Most recently, Applicant presented an application for a Major Commercial Development Special Permit in order to construct a permanent theater facility with 150 seats and space for ancillary functions. This application was approved by the Planning

Board at the December 8, 2014 hearing by virtue of Major Commercial Development Special Permit # 10-14 (the “Decision”), recorded in Book 1466, Page 333.

The applicant is now requesting to amend “Condition # 9” in said Decision with a proposed structure height of up to thirty-five (35) feet, as opposed to the previously approved 34 foot maximum. The site is located at 5 North Water Street and is shown on Tax Assessors Map 42.4.2 as Parcel 88.

BASIS OF THE FINDINGS

The Planning Board’s findings and decision refer to the following:

- An application to the Planning Board for a Special Permit received February 2, 2015, with its Addendum;
- The prior special permit and variance relief granted by the Planning Board and the Zoning Board of Appeals;
- Representations and testimony received in connection with the public hearing held February 19, 2015; and
- Other documents on file with the Planning Board.

FINDINGS

Based on review of this application in accordance with the Nantucket Zoning Bylaw, plans and other materials submitted by the Applicant, and testimony received at the public hearings, the Planning Board finds that:

- The proposal has been approved by the Historic District Commission, and is complementary and appropriate for the scale of the adjoining streetscape, which is supported by the existence of surrounding buildings of equivalent height;
- The proposed building has received a Certificate of Appropriateness from the Nantucket Historic District Commission, is not detrimental to adjoining properties, and does not cast them in shadow or result in the loss of privacy, air circulation, sunlight, safe ingress and regress or overcrowding.

SIGNATURE PAGE TO FOLLOW

DECISION AND RECORD OF VOTE

The Planning Board renders this decision based on the “Proposal” and “Findings” section of decision, as well as compliance with the following sections of the Nantucket Zoning Bylaw: Commercial Downtown (CDT) zoning district (139-7), Major Commercial Development (139-11), and Height (139-17).

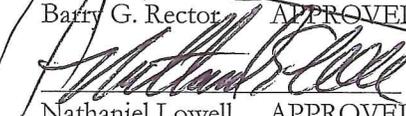
At the February 19, 2015 meeting, the Board voted 4-0 to CLOSE the public hearing, to APPROVE the requested modification, and to ENDORSE this decision based upon on the following:

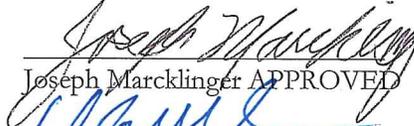
- 1. That the following waiver from Section 139-17 shall be granted:

139-17 C(5) Height exceptions for buildings within the CDT district
 SPECIAL PERMIT GRANTED – the proposed structure height of 35 feet is complementary and appropriate for the scale of the structures in the area, has been approved by the Historic District Commission, and is not detrimental to the adjoining properties. For additional information, see the “Findings” section of this decision.

- 2. That this approval is based on the following conditions:

- a) Modified Condition # 9 shall read:
 9) **That the new structure shall not be greater than ~~34~~ 35 feet in height.**
- b) Except as herein modified, the relief granted by this Board in prior Decision referenced above remains in full force and effect.


 Barry G. Rector APPROVED

 Nathaniel Lowell APPROVED


 Joseph Marcklinger APPROVED

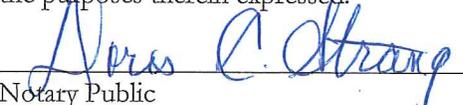
 Carl Borchert APPROVED

COMMONWEALTH OF MASSACHUSETTS

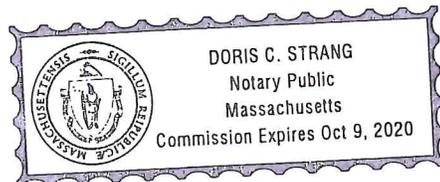
Nantucket, SS

March 30, 2015

On the 30th day of March, 2015, before me, the undersigned notary public, personally appeared Nathaniel Lowell, one of the above-named members of the Planning Board of Nantucket, Massachusetts, personally known to me to be the person whose name is signed on the preceding document, and acknowledged that he/she signed the foregoing instrument voluntarily for the purposes therein expressed.


 Notary Public

10/09/2020
 My Commission Expires





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NANTUCKET TOWN CLERK

Nantucket Planning Board

**APPROVAL OF MODIFICATION #2
TO SPECIAL PERMIT DECISION #10-14
FOR A MAJOR COMMERCIAL DEVELOPMENT**

NANTUCKET THEATRE INSTITUTE, INC.

Special Permit #10-15

Applicant / Owner: Nantucket Theatre Project, LLC
c/o Cohen & Cohen Law PC
PO Box 786
Nantucket, MA 02554

Property Address: 5 North Water Street

Assessor Map 42.4.2 Parcel 88
Plan Book 10, Page 49

March 9, 2015

GENERAL DESCRIPTION

At a public hearing on March 9, 2015, the Nantucket Planning Board considered the application of The Nantucket Theatre Institute, Inc. (hereafter the Applicant) for a Modification to Major Commercial Development (MCD) Special Permit # 10-14 pursuant to the following sections of the Nantucket Zoning Bylaw: Major Commercial Development (139-11), and; Inclusionary Housing (139-11.J).

PROPOSAL

Applicant plans to establish a theatre and arts facility at 5 North Water Street. During its planning stages, the Applicant received limited Special Permits and Variances from the Planning Board and Zoning Board of Appeals ("ZBA") for use of the locus for such performances, and related practices, education, promotion, administration, housing, and concessions. The permits allowed the use of a tent as a temporary theater for the 2013 and 2014 seasons (see ZBA relief granted by Variance in File No. 22-13, recorded in Book 1388, Page 241, and extensions granted in File No.s 61-13 and 06-14, and; Planning Board Special Permit # 05-13, recorded in Book 1388, Page 342 and Special Permit # 01-14). Most recently, Applicant presented an application for a Major Commercial Development Special Permit in order to construct a permanent theater facility with 150 seats and space for ancillary functions. This application was approved by the Planning Board at the December 8, 2014 hearing by virtue of Major Commercial Development Special Permit # 10-14

(the “Decision”), recorded in Book 1466, Page 333, and further amended at the February 19, 2015 hearing by virtue of Special Permit # 06-15 (not yet recorded).

The applicant is now requesting to amend said Decision in which a partial waiver was granted from the provision of inclusionary housing. The waiver, pursuant to Section 139-11.J, was based on the representation that the applicant proposed a 2-bedroom apartment in the existing structure on the lot. Although the apartment would be available for employees and/or actors, it would not be income restricted. Applicant now seeks clarification and approval of a full waiver of the provisions of Section 139-11.J and, therefore, fully eliminating any requirement for inclusionary housing. The site is located at 5 North Water Street and is shown on Tax Assessors Map 42.4.2 as Parcel 88.

BASIS OF THE FINDINGS

The Planning Board’s findings and decision refer to the following:

- An application to the Planning Board for a Special Permit received February 18, 2015, with its Addendum;
- The prior special permit and variance relief granted by the Planning Board and the Zoning Board of Appeals;
- Representations and testimony received in connection with the public hearing held March 9, 2015; and
- Other documents on file with the Planning Board.

FINDINGS

Based on review of this application in accordance with the Nantucket Zoning Bylaw, plans and other materials submitted by the Applicant, and testimony received at the public hearings, the Planning Board finds that the originally proposed employee apartment is no longer required as a condition of approval. The Board notes that the language contained in Section 139-11J states that the Planning Board *may* require applicants to provide inclusionary housing as a condition of approval. The Board considers this option on a case by case basis and determines whether or not to require it based on the specific circumstances of an application. In many cases, the applicant volunteers to provide housing because it is a necessity to attract employees. In other cases, it is not practical for financial or other reasons. Specific to this application, the applicant represented that Building Code requirements relative to preservation of the “antique” structure in which the apartment was planned to be contained have caused a substantial hardship and that moving forward with plans to include an apartment are not feasible.

SIGNATURE PAGE TO FOLLOW

DECISION and RECORD OF VOTE

The Planning Board renders this decision based on the "Proposal" and "Findings" section of this decision and upon compliance with the following sections of the Nantucket Zoning Bylaw: Commercial Downtown (CDT) zoning district (139-7); Major Commercial Development (139-11), and; Inclusionary Housing (139-11.J).

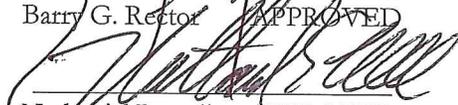
At the March 9, 2015 meeting, the Board voted 5-0 to close the public hearing, to APPROVE the requested modification, and to ENDORSE this decision based upon the following:

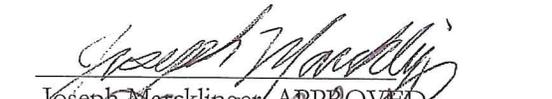
- 1. That the following waiver from Section 139-11J shall be granted:

139-11 J Inclusionary Units
 WAIVER GRANTED – while the original proposal included a 2 bedroom apartment for use by staff and/or actors to be located on the second floor of the existing main structure, the Board now waives that requirement. Furthermore, in consideration of the scale and nature of this project, the Board determines that the provision of off-site employee housing is not required.

- 2. That this approval is based on the following conditions:

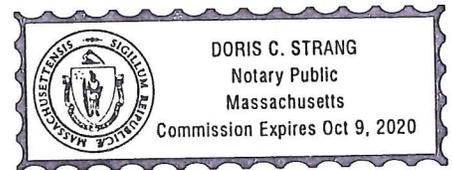
- a) No inclusionary housing shall be required for the proposed project. If the applicant/owner later determines that an on-site employee dwelling unit is feasible within the structures, the Planning Board may approve the dwelling unit without holding a public hearing;
- b) Except as herein modified, the relief granted by this Board in prior Planning Board Decisions (#'s 10-14 as modified by #06-15) referenced above remains in full force and effect.


 Barry G. Rector APPROVED

 Nathaniel Lowell APPROVED


 Joseph Marcklinger APPROVED

 Linda F. Williams APPROVED

 John McLaughlin APPROVED

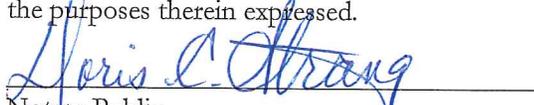


COMMONWEALTH OF MASSACHUSETTS

Nantucket, SS

_____ March 30 _____, 2015

On the 30th day of March, 2015, before me, the undersigned notary public, personally appeared Joseph Marcklinger, one of the above-named members of the Planning Board of Nantucket, Massachusetts, personally known to me to be the person whose name is signed on the preceding document, and acknowledged that he/she signed the foregoing instrument voluntarily for the purposes therein expressed.


 Notary Public

_____ 10/09/2020 _____
 My Commission Expires

Holly Backus

From: Holly Backus
Sent: Monday, June 06, 2016 8:15 AM
To: 'greta van susteren'
Cc: Catherine Ancero
Subject: RE: 5 North Water Street

Good Morning Greta,

Thank you for your email.

Staff will make sure your comments are provided to the Board.

If you are on island, please feel free to attend the meeting on Monday, June 13th at 6:30PM at the Public Safety Facility at 4 Fairgrounds Road.

Please let me know if you have any questions or if I can be of further assistance.

Thank you,

Holly E. Backus
Land Use Specialist
Town of Nantucket

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

From: greta van susteren [<mailto:gretavs@icloud.com>]

Sent: Sunday, June 05, 2016 3:21 PM

To: Holly Backus

Subject: Re: 5 North Water Street

TO: Nantucket Planning Board

From: Greta Van Susteren

8 Water Street

Nantucket Theatre Project is seeking a special permit for temporary portable restrooms.

I have no objection to putting them on the less traveled street Whaler's Lane. That makes sense to use that street to accommodate the theatre.

Water Street is too heavily traveled (cars and foot) and hence it makes sense to put on the less traveled side.

Best, Greta Van Susteren

Holly Backus

From: Holly Backus
Sent: Monday, June 06, 2016 8:51 AM
To: 'Carter Mills'
Cc: jedsoffice@bellsouth.net; Catherine Ancero
Subject: RE: Objection to Portable Public Restrooms at 5 North Water Street

Good Morning,

Thank you for your email/letter.

Staff will make sure your comments are provided to the Board.

If you are on island, please feel free to attend the meeting on Monday, June 13th at 6:30PM at the Public Safety Facility at 4 Fairgrounds Road.

Please let me know if you have any questions or if I can be of further assistance.

Thank you,

Holly E. Backus
Land Use Specialist
Town of Nantucket

From: Carter Mills [<mailto:cartermills@squirecreek.net>]
Sent: Sunday, June 05, 2016 6:53 PM
To: Holly Backus
Cc: jedsoffice@bellsouth.net
Subject: Objection to Portable Public Restrooms at 5 North Water Street

Please see the attached letter.

A. Carter Mills IV
cartermills@squirecreek.net
318.791.1057

A. CARTER MILLS, IV
(A PROFESSIONAL LAW CORPORATION)

June 5, 2016

VIA E-MAIL
hbackus@nantucket-ma.gov

Nantucket Planning Board
2 Fairgrounds Road
Nantucket, MA 02554

Re: **Objection to Portable Public Restrooms at 5 North Water Street**
(#28-16 Nantucket Theatre Project LLC, 5 North Water Street)

On behalf of James Davison, who owns 8A North Water Street, I am writing in response to the referenced Public Notice to object to the request by the Owner of 5 North Water Street to “locate portable restrooms on the site ... for use by the patrons and the public.” Mr. Davison and his wife enjoy sitting on their front porch across the street and believe portable public restrooms at 5 North Water Street would create a nuisance.

Sincerely,



A. Carter Mills IV

Holly Backus

From: Holly Backus
Sent: Tuesday, June 07, 2016 8:39 AM
To: 'Jim Frates'
Cc: Catherine Ancero
Subject: RE: Planning Board Hearing on 5 North Water Street

Good Morning Mr. Frates,

Thank you for your email.
Your comments will be provided to the Planning Board members prior to the meeting.

I understand you will not be able to attend the meeting, however the meetings are recorded and streamed live on the town's website (<http://www.nantucket-ma.gov/363/Video-On-Demand>) for the community's convenience.

Please let me know if you have any questions or if I can be of further assistance.
Thank you,

Holly E. Backus
Land Use Specialist
Town of Nantucket

From: Jim Frates [<mailto:jim.frates@alkermes.com>]
Sent: Monday, June 06, 2016 4:46 PM
To: Holly Backus
Cc: Jim Frates
Subject: Fwd: Planning Board Hearing on 5 North Water Street

Please note, I was given notice of this hearing by a neighbor this morning and so just sent you the note below. Perhaps a minute or two late, please confirm receipt and accept my apologies for being so close to the deadline...and the spelling errors I see upon a closer read. I will correct in the version below if you care to use that for the public record.

Thank you
Jim
781 480 8313 cell

Sent from my iPad

Begin forwarded message:

From: Jim Frates <jim.frates@alkermes.com>
Date: June 6, 2016 at 4:34:37 PM EDT
To: "hbackus@nantucket-ma.gov" <hbackus@nantucket-ma.gov>, Jim Frates <jim.frates@alkermes.com>
Subject: Planning Board Hearing on 5 North Water Street

Dear Planning Board,
My family and I write to adamantly oppose the ideas that any special permits or exceptions be granted for public restrooms at the Nantucket Theatre. While we understand the desire of the theatre to be up and running as soon as possible, we feel strongly that shortcutting basic

occupancy and crowd hygiene rules and common sense put an undue burden on already disturbed residential neighbors.

Our family purchased 10 North Water Street, directly across from the new large theatre more than thirty years ago and have watched as the commercial district slowly expanded. It has eaten up a once quiet neighborhood. The additional stress of outdoor, noisy, smelly, unsightly and unsanitary bathrooms (where are hands washed, trash collected, etc.) seems a step too far when even single households would have the requirement of basic plumbing to receive their occupancy certificate.

We are unable to be at the hearing on Monday, June 13th but as long time summer residents who will be in our home from the middle of June on this year please keep our neighborhood up to Nantucket standards. A porta potty will be an eye sore and a nuisance drawing additional crowds and pollution. Who will be there to manage the late night issue that may arise on Saturday's or Sunday's when the potty will attract the late night crowd leaving the bar? Waste piles up on North Water Street and our front step as it is (cans, containers, trash, cigarette butts) and these public restrooms will make the problem worse. They may be cleaned Monday morning or at the start of a business day but they ruin our weekends and mornings.

The neighbors have quietly and peacefully born the massive construction inconvenience without complaint, please don't inflict this outdoor porta potty open to crowds and the public because of poor schedule management on the owners part. This is not a fairgrounds, we live, sleep and walk on North Water every night and don't deserve a porta potty for a neighbor. Ask yourself if you would put it next to your house.

Respectfully submitted,
James Frates and Elizabeth Pegg
10 North Water Street
Nantucket, 02554

471 Grove Street
Needham, MA. 02492

781 609 6127 w
781 235 2546 h
617 480 8313 cell

Sent from my iPad

This message may contain confidential or privileged information. If you are not the intended recipient, please advise the sender immediately by reply e-mail and delete this message and any attachments without retaining a copy. Thank you for your cooperation.

Holly Backus

From: Holly Backus
Sent: Tuesday, June 07, 2016 8:54 AM
To: '7 Northwater'
Cc: Catherine Ancero
Subject: RE: case 28-16

Good Morning Dana,

Thank you for your email.

Your questions and comments will be provided to the Planning Board members prior to the meeting.

I understand you will not be able to attend the meeting, however the meetings are recorded and streamed live on the town's website (<http://www.nantucket-ma.gov/363/Video-On-Demand>) for the community's convenience.

Please let me know if you have any questions or if I can be of further assistance.

Thank you,

Holly E. Backus
Land Use Specialist
Town of Nantucket

From: 7 Northwater [<mailto:7northwater@gmail.com>]
Sent: Monday, June 06, 2016 4:55 PM
To: Holly Backus
Subject: case 28-16

Attention Holly Backus and HDC Planning Board

Case 28-16

I am the owner of 7 North Water Street and cannot attend meeting on Monday June 13th but wanted to express my thoughts regarding this matter.

I am new to the area and am excited for a great season on Nantucket. I am not looking to make waves but I am not in favor of portable bathrooms being installed with regards to not truly understanding where the location would be and how it will affect my property with public usage, noise, smell, and aesthetics. I spoke with Mike Kopko an executive over at the theatre and expressed my concerns and he stated that the outdoor bathrooms are off the table now and he was going to make an alternative plan inside. I have no idea if that is the case. Secondly my question is in regards of the Temporary Certificate occupancy. Does this change the working hours on the exterior of the property during summer season? Will that be disruptive to the people that are renting my property? If so, how ? I'm just trying to manage my expectations and renters expectations as there is so much work being done within the vicinity. I'm under the assumption that a privacy fence and extensive

landscaping were going to be installed on our property border and that a lot of my fears would go away. If that is accurate, when is that happening and what is the timeline expected?

Thanks again for your time.

Dana Pascucci

917 676 4714

Holly Backus

From: Holly Backus
Sent: Tuesday, June 07, 2016 9:08 AM
To: 'Mary Parker'
Cc: Catherine Ancero
Subject: RE: #28-16 Nantucket Theatre Project

Good Morning Mrs. Parker,

Thank you for your email.

Your questions and comments will be provided to the Planning Board members prior to the meeting.

If you are on-island, please feel free to attend the meeting on Monday, June 13th at 6:30PM at the Public Safety Facility at 4 Fairgrounds Road. If not, the meetings are recorded and streamed live on the town's website (<http://www.nantucket-ma.gov/363/Video-On-Demand>) for the community's convenience.

Please let me know if you have any questions or if I can be of further assistance.

Thank you,

Holly E. Backus
Land Use Specialist
Town of Nantucket

From: Mary Parker [<mailto:islandgirlmary@yahoo.com>]
Sent: Monday, June 06, 2016 5:18 PM
To: Holly Backus
Subject: RE: #28-16 Nantucket Theatre Project

Dear Mr. Rector,

I am vehemently opposed to having potable toilets situated at the White Heron Theatre for the 2016 Summer season. Besides the stench and appearance, the whole concept sounds unacceptable.

It will be offensive to the entire neighborhood if they are visible from the street and the concept that they will be available for patrons "and the public" suggests that they will either be visible or "promoted" to the public somehow. We have very sufficient public toilets at the Town Building that are well maintained by a committed staff.

I cannot imagine that several porta-johns can handle the capacity of the 50+ seating of the theatre and suspect that odor will become an issue quickly. Where is the proposed location of the toilets on the site?

My up-scale rental home is within sight of the theatre and my tenants will pass it frequently during their stay at my home. I do not wish them to have to pass by portable toilets. They are unsanitary, odor producing and an extremely "shabby" addition to our neighborhood.

Sincerely,

Mary Parker
2 Ash Lane