



MEETING POSTING

TOWN OF NANTUCKET

Pursuant to MGL Chapter 30A, § 18-25

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

Committee/Board/s | Nantucket Historical Commission

Day, Date, and Time | Monday, February 24, 2020 10:30 AM

Location / Address | **Nantucket Atheneum Learning Lab, 1 India St.**

If there is no quorum of members present, or if meeting posting is not in compliance with the OML statute, no meeting may be held.

NANTUCKET HISTORICAL COMMISSION

Signature of Chair/Authorized Person Hillary Hedges Rayport

Please note:

www.nantucket-ma.gov

Commissioners: Clement Durkes, Angus Macleod (Vice Chair), Tom Montgomery, Georgia Raysman, Mickey Rowland, Hillary Hedges Rayport (Chair), David Silver (Secretary)

Associate Commissioners: Ben Normand, Don DeMichele **Staff:** Holly Backus

NB NEXT MEETING DATES: March 20th 1:00 - 3:00; April 17 1:00 - 3:00; May 22 1:00 - 3:00

AGENDA

Listed below are the topics the chair reasonably anticipates will be discussed at the meeting.

- Establishment of a Quorum
- Public Comment
- Approval of the minutes of the 1/17/20 meeting
- Updates on old business
- Historic Pavement and Sidewalks (guest: DPW Director Rob McNeil)
 - Recent and Future work in the OHD
 - Response to concerns
 - Preservation Engineering Study
 - Special Town Meeting – Bylaw amendment
- ATM 2020 Articles and action for comment
 - Article 62: Preservation of Historic Structures
 - Other articles of interest
- Staff Update
 - MVP Grant – Kick off meeting
 - Training – National Alliance of Preservation Commissions CAMP
 - Working Group/ CPC Grant RFP update (BWNiM)
 - Other business
- Communications
 - Town Website - Mission statement
 - Other communications

Minutes of Nantucket Historical Commission Meeting – January 17th, 2020

Commissioners Present: Tom Montgomery, Georgia Raysman, Mickey Rowland, Hillary Rayport, Don DeMichele, and David Silver

Others Present: Holly Backus (staff)

Meeting called to order at 10:35am

Motion to approve minutes (Tom M.) All in favor: Hillary, David, Clement, Tom, Angus, Mickey and Ben

Consent Agenda: Roundabouts With Nantucket In Mind. This is the report we prepared before, but adjusted as a broad guidance – not specific to a location. Report will be sent to the Select Board

Tom: motion to accept report All in favor: Hillary, David, Clement, Tom, Angus, Mickey and Ben

Historic Pavement – proposed for Annual Town Meeting Bylaw

1.) Driveway access amendment – proposed to Planning Board and Select board

Proposed addition to bylaw language - “A Certificate of Appropriateness issued by the Nantucket Historic District Commission (HDC) is required prior to driveway access approval by the DPW for lots located within the “Core Historic Districts” as shown on the map entitled “Core Historic Districts”, dated April 9, 2019, as may be amended from time to time by the HDC.”

- New zoning law specifies that you must go to the HDC for a COA prior to making an application to the DPW for a curb cut, in the Old Historic District

-Holly requests a letter in support of the proposed changes from the NHC to show our support for Holly. She will be presenting to HDC and Select board.

-Commission agrees to draft letter in support of Holly

2.) Proposed Amendment to by law limiting road construction. Asked the Select board to put forward as part of their warrant

-SB and Town manager Sent language to town council. Town council amended some wording but did not comment or offer much feedback. Town Mangers advice is to wait until next Town Meeting to allow feedback from Staff.

-Proposal to hold this until October in hopes that we can have comment from the DPW and hear their concners.

-Commission is all in favor of tabling this until October.

Upcoming roadwork – protection of historic pavement.

Exploring whether a “Friends of the Historical Commission” could be established to fund research and projects. Would provide support and resources for the NHC which exists as an advisory commission to the Town. Since we are already working with an understanding/working relationship with the Town this will allow us to hire consultants and professionals to work at a deeper level.

-The Town Manager appreciated the additional resources. Holly would be our liaison.

- One project could be a preservation engineer report on the streets/sidewalks.

Complete Streets Project

-Upper Main Street is in the implementation stage

-Judith Chase Lane also got tacked on (completed)

-Sparks Ave, Williams Street, Pleasant Street are on the agenda as well

-DPW oversees this project and there are a few documents that serve as important points of reference for this type of work

1.) “Complete Streets Policy” guides this type of work. NHC believes this document is an adequate guiding force for this work.

2.) “Sidewalk Improvement Plan Phase 1 Implementation Policy” (type of work, what will be done, etc.) Is this a current document?

-BETA is the company that will be doing the work

-Commission is concerned that the historical consideration may be overlooked. A lot of details have not been decided on, but we are concerned that they will follow the highway standards and ignore historically sensitive areas/materials/etc. For instance, how do we as a community feel about 30” florescent yellow signs? They will be everywhere.

-The guiding documents omit a lot of historical considerations that we believe should be prioritized. There is no definition of “historical considerations” and we fear that the wording does not hold these accountable. A concern is there is no preservation plan for Nantucket. The foundational documents to keep Nantucket looking like Nantucket must be expanded and readily available to planners and DPW.

NHC wants to look at the site and the language of the work. Plan to form a “Walking Tour” that will visit the site and assess the nature of the work. We want to do this before the 25% plan so that we have been to the site, done the research, etc.

-This will have to be in writing... for example, commenting on whether scale, colors, and materials are appropriate.

Discussion of upcoming meeting with DPW Director Rob McNeil (next meeting).

The NHC wants to understand Rob’s consideration of preservation and the nature of the work that was done on Judith Chase Lane, etc. We are committed to a process of learning, and the Commission believes that a dialogue with the person in-charge of this work will be very helpful to our deliberative process. We want Rob to see us as his partners in this process. We also want

to convey that Nantucket is different and classic engineering techniques may not always be the best practice when preservation is a factor.

-The NHC would like access to plans for the Complete Streets Project.

Staff Update

-MVP Grant for historical resources FEMA Flood Design Guidelines

-had to put a second RFP out, so we are hopeful that we can get them engaged

-public discussion and work groups will start happening between now and the June deadline

CAMP Training

-Holly spoke with executive director of NAPC (National Alliance for Preservation Commissioners)

-Two trainers familiar with Nantucket will be coming on May 29th We still need to hammer down a location and firm up the agenda (GHYC, Nantucket Hotel, etc.)

CPC Grant and Building with Nantucket in Mind

-Letter coming from the Holly to NHC and HDC jointly. This is to ensure a clear outline of each commission's responsibilities.

-NHC will be drafting RFP for the HDC to review.

Old Business – Milestone Road Project

-We compiled sign data from the Milestone Road project to take inventory of which signs in fact ended up going up, and which signs did not. Overall, about 50% of the signs have gone up.

Most of the deer signs and speed limit signs are up. A minority of turning ahead, truck ahead sign went up. Ped Xing ahead signs are up but pedx here are not up. The 24 no passing signs are not up. Do we want to have more commentary on the signs? Commission agrees that state has reviewed our concerns and more commentary would be redundant, but we can include this in our report to the Select Board when we next make one. We should talk to the DPW and find out what more signs are planned, if any.

NHC Website and Mission Statement – discussion postponed.

Social Media

-David to spearhead this effort in coordination with Florencia Rullo

-Consists of Twitter, Facebook, and Instagram

-This will give the public the ability to follow the Commission's work in real time

Next meeting scheduled for February 24th from 10:30am – 1:00pm **Meeting Adjourned at approx. 1:00 pm**

[Reply](#) [Reply All](#) [Forward](#)

Nantucket Historical Commission

To: Robert McNeil

Cc: Town Manager; Holly Backus

Attachments: (2) [Download all attachments](#)

[7_MBBronski-L.nec.pdf \(871 KB\) \[Open as Web Page\]](#); [8_SGH Draft Fee Estimate f~1.pdf \(52 KB\) \[Open as Web Page\]](#)

Sunday, February 09, 2020 11:45 PM

You forwarded this message on 2/9/2020 11:45 PM.

The Historical Commission is looking forward to seeing you on Monday, February 24th, at 10:30. Please note the new meeting location: the Atheneum Learning Lab (downstairs at 1 India Street).

You asked if we could send along the requested discussion topics ahead of time. The main topic of the meeting is the repair and rehabilitation of the sidewalks and stone and brick streets in the historic areas of Nantucket. **How do we, as civil servants to the Town of Nantucket, put our sidewalks into good repair while also discharging our duty to protect Nantucket's historic assets for future generations?**

- We'd appreciate an update from you (~15 mins) about the planned work on sidewalks downtown and cobblestone repair as well as opening/closing Main Street for sewer work. If you can share ahead of time engineering plans and contracts or current requests for bids (for both sidewalk work and cobblestone street work), that would help us understand the work.

- Next, we'll have time for the commissioners to ask questions.

- Then, we'd like to discuss how Nantucket can meet both historic preservation priorities and transportation / accessibility priorities. If you haven't yet done so, you might want to have a look at the NHC's draft guidelines for sidewalk and cobblestone street repair (posted on the NHC website under useful information), which we developed by reviewing Park Service guidelines and best practices from other historic communities. My sense is you don't agree all of these guidelines are appropriate for Nantucket, and we'd like to understand your concerns. As a possible path forward, a group of citizens has offered the gift of a preservation engineering study, specific to Nantucket's conditions, to assist the town in its planning. I know you've seen the letter of interest and draft proposal, but I've attached it again for your convenience and for our discussion.

One ahead of time question -- could you confirm if the document titled "Sidewalk Improvement Plan - Phase 1 Implementation Strategy" developed in 2017 — is still current and being used to develop plans? It might be most accurate if you could simply send us the send us the current guidelines for sidewalk repair.

That's pretty much what we'd like to cover. Could you kindly let us know if you plan to bring any guests?

Thank you for agreeing to join us on the 24th. We appreciate your time and look forward to a productive discussion.

6. BELGIAN PAVING BLOCK PAVEMENT

SCOPE

These specifications cover the construction of a Belgian Paving Block pavement. The work shall consist of furnishing and setting granite Belgian Paving Block block pavement on a stone dust setting bed on a gravel base course in accordance with these specifications and in close conformity of the lines and grades shown on the Plans.

MATERIALS

Materials shall meet the requirements specified in the following descriptions and/or subsections of Division III of the Massachusetts Standard Specifications for Bridges and Highways.

Belgian Blocks. Belgian Paving Blocks shall be granite, basically light grey in color, free from seams and other structural imperfections or flaws which would impair its structural integrity, and of a smooth splitting appearance. Natural color variations characteristic of the deposit from which the paving blocks are obtained will be permitted. Cobblestone block shall be rectangular in shape with one good face and shall have uniform dimensions with the following limitations:

	Minimum	Maximum
Length	4 "	12 "
Width	3.5 "	4.5"
Depth	3.5"	4.5"

Sand Borrow. M1.04.0 Type A.

Portland Cement. M4.01.0

Stone Dust. Stone dust shall conform to the following gradation requirements:

Passing Sieve Size	Percentage Passing
No. 4	100
No. 50	90
No. 200	65

Gravel Borrow. M1.03.0 Type b

EXECUTION

The subbase below the stone dust setting bed shall be fine graded and thoroughly compacted (as required under Section 401 of the MSSBH).

The Belgian Paving Block will be set with the smooth side up. The top surface shall be approximately 4 inches by 8 inches. The joints between the Belgian Paving Blocks shall be set as shown on Plate 7.

The Belgian Paving Block shall be compacted and tamped by a method approved by the Board or its Agent. The pavement surface shall be tested with a 10-foot straight edge and laid parallel with the centerline and any variations exceeding 1/2 inch shall be reset to proper grade.

The Belgian Paving Block shall be swept with a sand/cement mixture (three parts sand, one part cement) and fogged with water. The pavement surface shall be vibrated to insure compactions between the joints. Additional joint filler of the sand/cement mixture shall be uniformly distributed as necessary to fill all of the voids. The process shall be repeated for a maximum of five (5) days until all joints are full.

7. COBBLESTONE PAVEMENT

SCOPE

These specifications cover the construction of cobblestone pavements. The work shall consist of furnishing and setting granite cobblestone pavers on a stone dust setting bed over a gravel base course in accordance with these specifications and in close conformity with the lines and grades shown on the plans or established by the Engineer.

MATERIALS

Materials shall meet the requirements specified in the following descriptions and/or sub-sections of Division III of the Massachusetts Standard Specifications for Bridges and Highways.

Cobblestones. Cobblestones shall be granite, of fairly uniform shape and color, free from cracks and other structural imperfections or flaws which would impair its structural integrity, and of a smooth appearance. Natural color variations, characteristic of the deposit source will be permitted. Cobblestones shall be similar to existing cobblestones on various downtown streets. Samples shall be submitted for approval by the Nantucket Planning Board.

Sand Borrow. M1.04.0 Type A.

Portland Cement. M1.01.0

Stone Dust. Stone dust shall conform to the following gradation requirements:

Passing Sieve Size	Percentage Passing
No. 4	100
No. 50	90
No. 200	65

Gravel Borrow. M1.03.0 Type b

CONSTRUCTION METHODS

The subbase below the stone dust setting bed shall be fine graded and thoroughly compacted (as required under section 401. of the M.S.S.B.H).

Cobblestones shall be carefully laid on a stone dust setting bed as shown on the plans, and shall be solidly rammed in position by hand.

The cobblestones shall be set with the long axis of each stone vertical to the roadway surface. The cobblestones shall be set such that each cobblestone is touching another cobblestone.

The cobblestones shall be compacted and tamped with a mechanical plate compactor or by another method approved by the Board or its Agent. After a sufficient area of pavement has been laid, the pavement surface shall be tested with a 10-foot straight edge and laid parallel with the centerline and any variations exceeding

1/2 inch shall be corrected and brought to proper grade. Any stones that become cracked during these procedures shall be removed and replaced.

The cobblestones shall be swept with a sand/cement mixture (three parts dry sand, one part cement) and fogged with water. The pavement surface shall be vibrated with a lightweight plate compactor to insure compaction between the joints. Additional joint filler of sand/cement mixture shall be uniformly distributed as necessary to fill all of the voids. The process shall be repeated for a maximum of five days until all the joints are full.

8. BRICK PAVEMENT

SCOPE

These specifications cover the construction of a Brick Paving Block Pavement. The work shall consist of furnishing and setting extruded fireclay Brick Paving Block pavement on a stone dust setting bed on a dense graded crushed stone and gravel base course in accordance with these specifications and in close conformity to the lines and grades shown on the plans.

MATERIALS

Materials shall meet the requirements specified in the following descriptions and/or subsections of Division III of the Massachusetts Standard Specifications for Bridges and Highways.

Brick Pavers. Brick Paving Block shall be for exterior paving, manufactured from extruded fireclay from shale and shall be fired to produce a dense paver and shall meet the requirements of ASTM C216-69-SW-FBS with water absorption not more than 5 percent with five-hour bail. Laminated brick will not be acceptable. Standard Face brick will not be acceptable.

All brick shall be batched type burned to provide the various colors by controlled atmosphere and temperature conditions, required to obtain a rustic blend (70 percent red and 30 percent brown to black). The brick shall be highly resistant to abrasion and shall have an average compressive strength of 8000 or more psi over a 100-cycle freeze-thaw test.

The brick shall be wire-cut to a size of 4 x 8 x 2.25 inches. Brick shall be delivered to the site on pallets. Samples shall be submitted for approval by the Nantucket Planning Board.

Sand Borrow. M1.04.0 Type A.

Portland Cement. M4.01.0

Stone Dust. Stone dust shall conform to the following gradation requirements:

Passing Sieve Size	Percentage Passing
No. 4	100
No. 50	95
No. 200	65

Dense Graded Crushed Stone. M2.01.7

Gravel Borrow. M1.03.0 Type b

CONSTRUCTION METHODS:

Each pavement layer shall be fine graded and thoroughly compacted (as required under Section 401. of the M.S.S.B.H.)

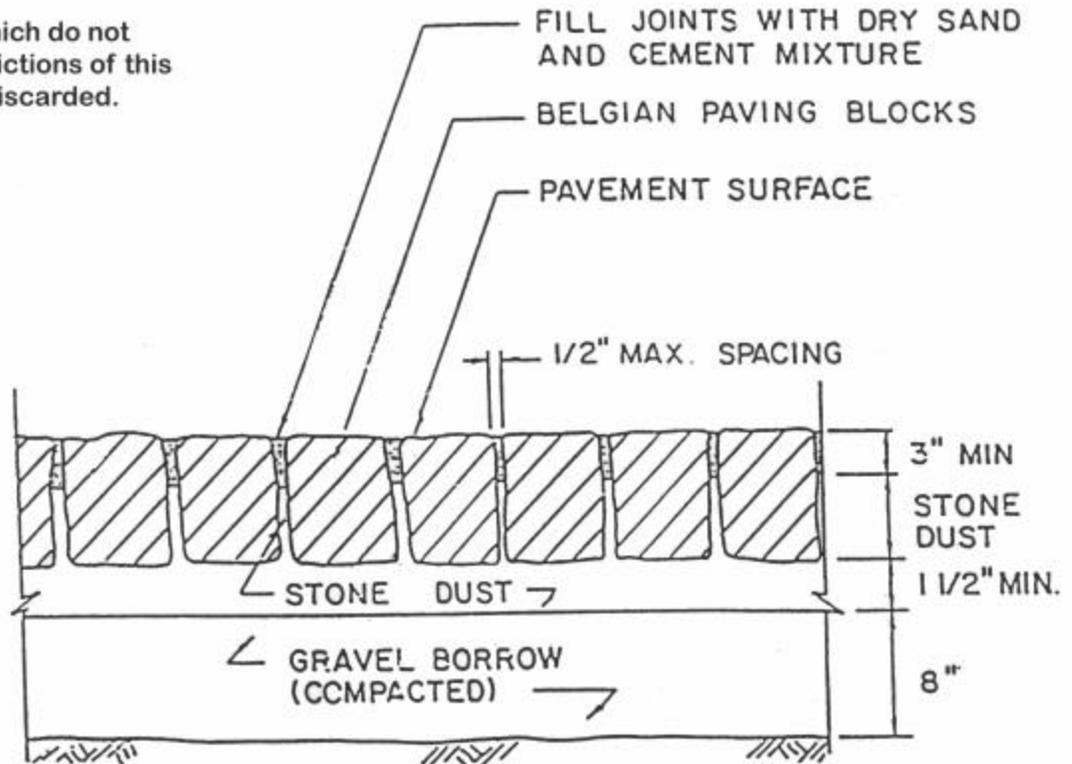
The Brick Pavers shall be laid true to lines and grades with joints of uniform thickness, all surfaces true and corners straight and plumb. Paving patterns shall be as shown on the plans or to match existing patterns, as directed by the Board or its Agent. Any patterns in which the alignment is not acceptable shall be promptly removed and reset.

The Brick Pavers shall be compacted and tamped with a lightweight mechanical plate compactor or by another method approved by the Board or its Agent. After a sufficient area of pavement has been laid, the pavement surface shall be tested with a 10-foot straight edge and laid parallel with the centerline and variations exceeding 1/2 inch shall be corrected and brought to proper grade. Any pavers which become damaged during these procedures shall be promptly removed and reset.

The Brick Pavers shall be swept with a dry sand/cement mixture (three parts dry sand, one part cement) and fogged with water.

The pavement surface shall be vibrated with a lightweight plate compactor to insure compaction between joints. Additional joint filler sand/cement mixture shall be uniformly distributed as necessary to fill all of the voids. The process shall be repeated for a maximum of five days until all the joints are full, and all pavers are stabilized.

Note: Blocks which do not satisfy the restrictions of this detail shall be discarded.



**Typical Section
Belgian Block
Pavement Construction
(NTS)**

Plate No. 7

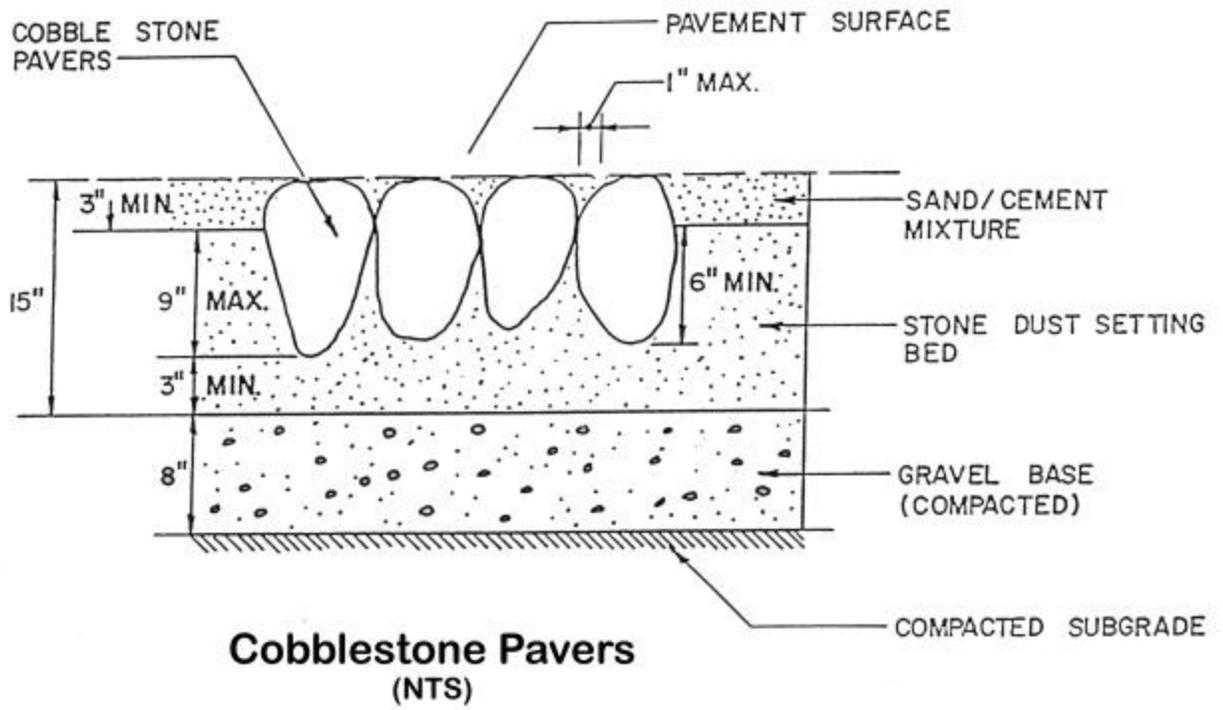
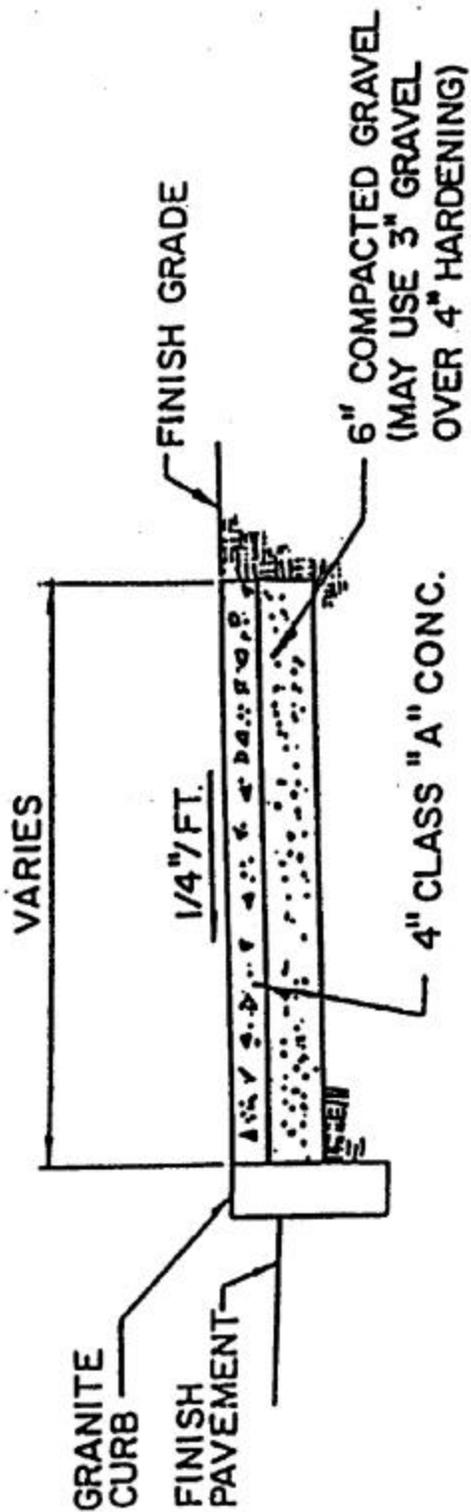
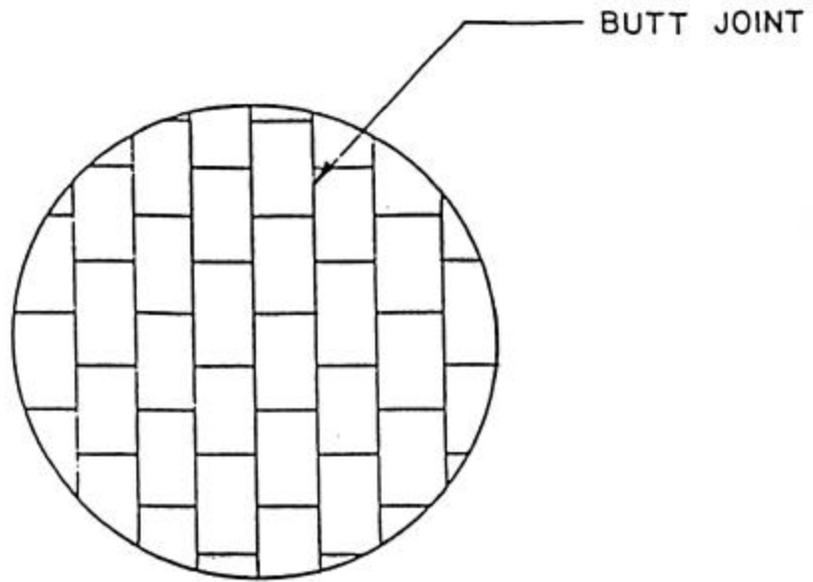


Plate No. 8

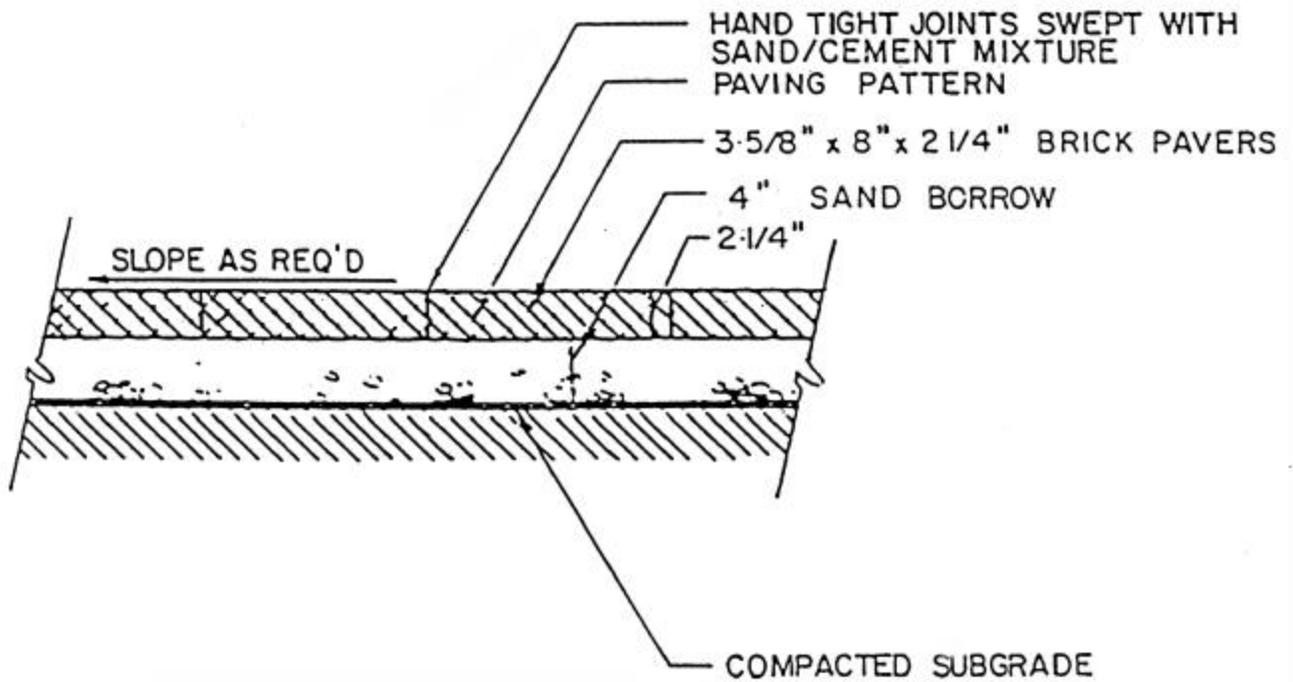


Typical Concrete
Sidewalk Section
(NTS)

Plate No. 9

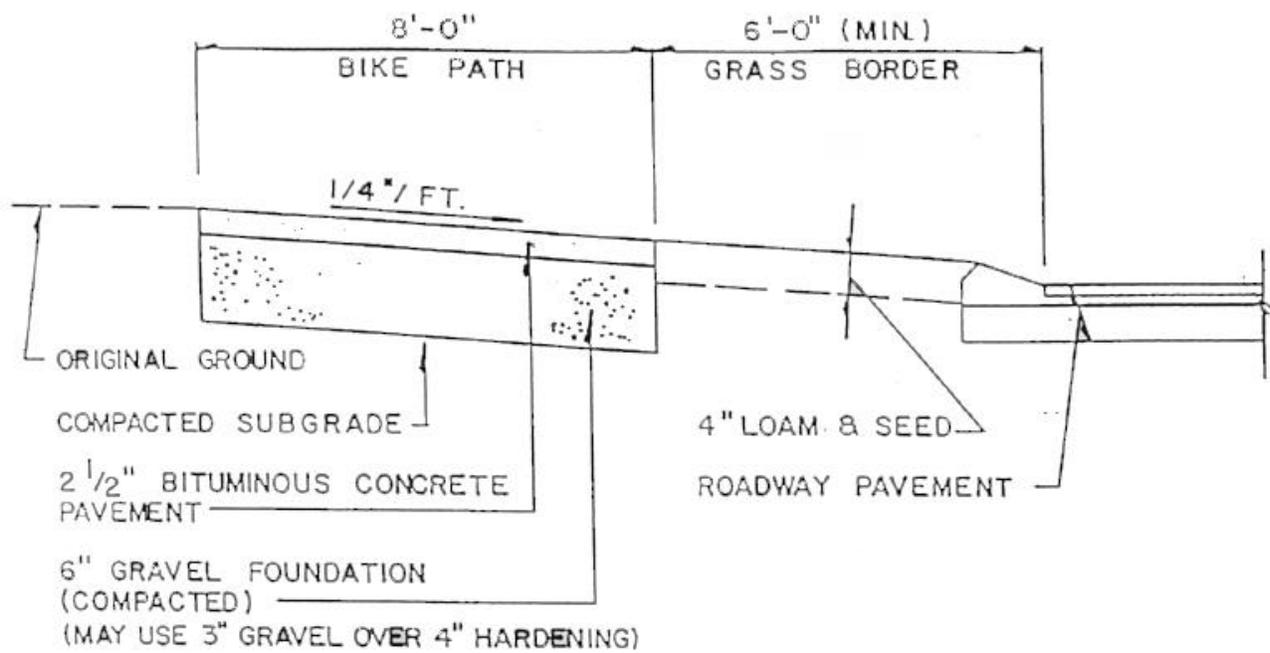


Paving Pattern Plan



**Typical Section
Brick Walkway Pavers
NTS**

Plate No. 10



Typical Bike Path Section
(NTS)

Plate No. 11

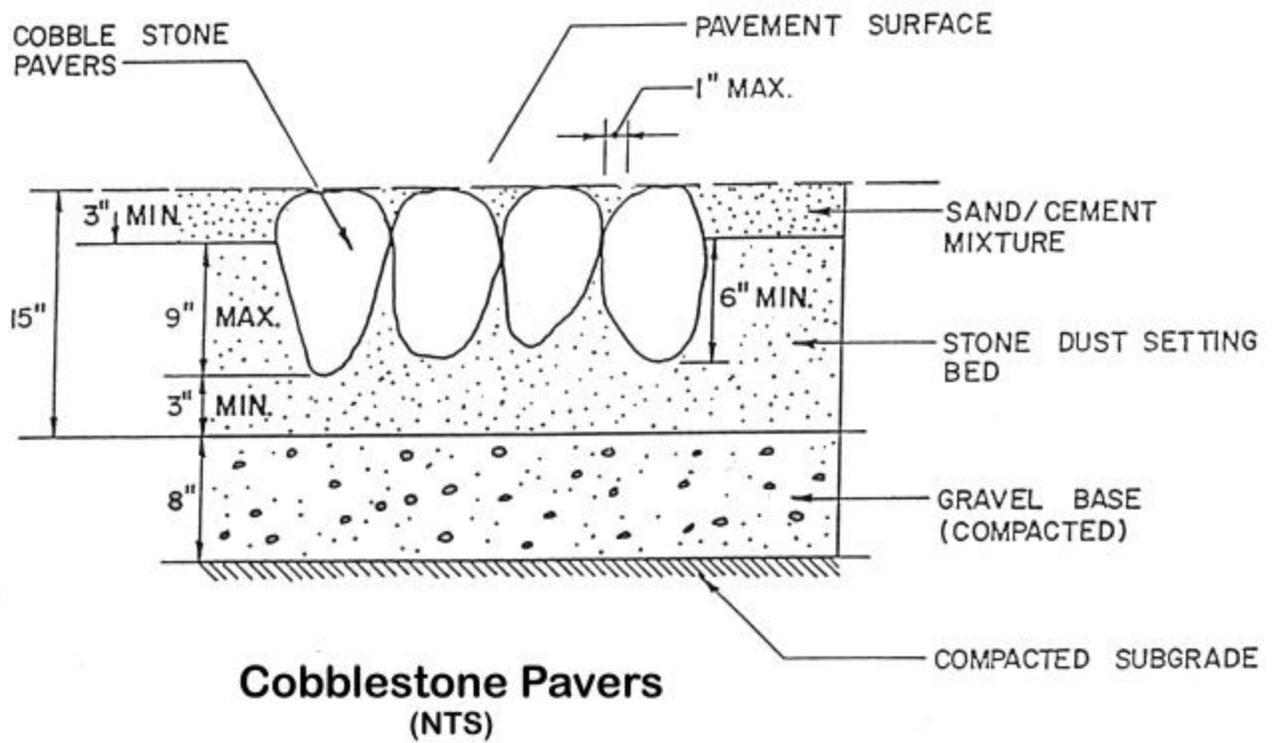
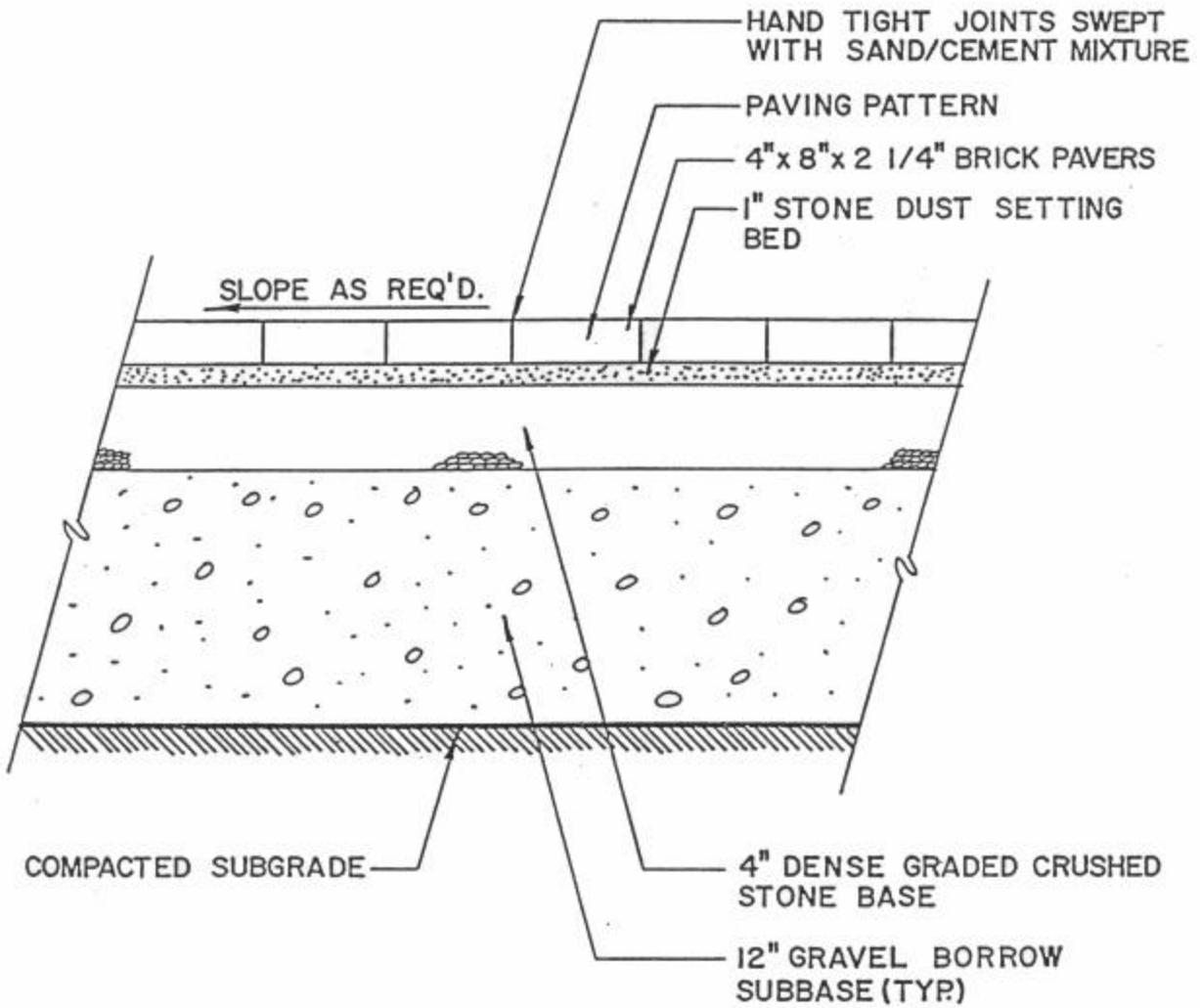


Plate No. 14



Brick Roadway Pavers
(NTS)

Plate No. 15



February 4, 2020

Michael Burns
Transportation Planner
Nantucket Planning Office
2 Fairgrounds Road
Nantucket, 02554

The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Massachusetts Historical Commission

RE: Sparks Avenue Sidewalk Improvements, Nantucket, MA. MHC #RC.67616.

Dear Mr. Burns:

Staff of the Massachusetts Historical Commission (MHC) have reviewed the Project Notification Form (PNF) for the project referenced above. The proposed project includes improvements and expansion of the existing Sparks Avenue sidewalk to 8 feet wide between Atlantic Avenue and Milestone Lane on Nantucket. The proposed project will be funded by the MassDOT Tier 3 Complete Streets program.

Nantucket Island is a National Historic Landmark, listed on the State and National Registers of Historic Places and a local historic district. The project is proposed adjacent to the Old South/Newtown Cemetery that contains marked burials dating to the 18th century. Multiple ancient Native American archaeological sites are recorded in the MHC's Inventory in the vicinity of the project.

Although the project area includes paved and/or graded gravel surfaces that may contain existing utilities, the proposed project includes ground impacts adjacent to the Old South/Newtown Cemetery. Undisturbed portions of the project impact area are archaeologically sensitive, and may contain unmarked burials associated with the Old South Cemetery, and/or artifacts, features and subsurface soil deposits associated with ancient Native American and historical period occupation and land use on Nantucket.

The MHC requests that an archaeological reconnaissance survey (950 CMR 70) be conducted for the project. The purpose of the survey is to develop an archaeological sensitivity assessment for the project impact area. The results of the survey will provide information, and recommendations for further intensive (locational) archaeological survey, if any, to assist in consultation to consider alternatives to avoid, minimize, or mitigate any adverse effects to significant historic and archaeological resources, well in advance of any project construction. A State Archaeologist's Permit (950 CMR 70.03) is required to be obtained for the investigation. The survey should be conducted by a qualified professional archaeological team with experience on Nantucket.

These comments are offered to assist in compliance with Massachusetts General Laws Chapter 9, Sections 26-27C (950 CMR 70-71), and the Massachusetts Unmarked Burial Law (M. G. L. Chapter 38, Section 6; Chapter 9, Section 26A and 27C; and, Chapter 7, Section 38A; all as amended). If you have questions or require information, please contact Jonathan K. Patton at this office.

Sincerely,

A handwritten signature in cursive script that reads "Brona Simon".

Brona Simon
Executive Director
State Historic Preservation Officer
State Archaeologist
Massachusetts Historical Commission

xc: Jamie Harwood, MADOT
Bettina Washington, WTGH(A)
David Weeden, Mashpee Wampanoag Tribe
Nantucket Historic District Commission



NANTUCKET HISTORICAL COMMISSION

Town of Nantucket
2 Fairgrounds Road
Nantucket, Massachusetts 02554

February 11, 2020

Ms. Mary Bergman
Executive Director
Nantucket Preservation Trust
Via email

COMMISSIONERS

Hillary H. Rayport (Chair)
Angus MacLeod (Vice-Chair)
David Silver (Secretary)
Clement Durkes
Thomas M. Montgomery
Georgia U. Raysman
Milton Rowland

ALTERNATES

Don DeMichele
Ben Normand

Dear Mary:

I'm writing regarding the Demolition Delay Law you've proposed under Citizen's Warrant (Article 62 – Preservation of Historically Significant Buildings).

Demolition of historic buildings is a significant concern of the Nantucket Historical Commission. Nantucket's collection of true 18th, 19th, and early to mid 20th century buildings are the foundation of our National Historic Landmark and Historic District status.

While the Nantucket Historic District Commission has absolute power to halt demolitions, the reality is this power can be difficult to exercise. Witness that, in the last 24 months, the HDC has approved demolition of 90 structures, 26 of them contributing historic structures, according to your calculations. When a contributing historic structure has been demolished, even if it is replaced in kind, the streetscape is forever altered and some of our authentic history is lost.

I've reviewed Article 62, as well as town counsel's comments. To paraphrase KP Law, demolition delay laws exist in numerous Massachusetts cities and towns, but are typically administered by the historical commission, not the historic district commission. This is because the two commissions are governed by different legislation with different powers. Specifically, the enabling legislation governing Nantucket's historical commission (MGL c. 40 Section 8D), charges the Commission with the power to inventory and preserve historic assets, including developing the requisite procedures to determine if a building should be preferably preserved. The Nantucket Historic District Commission is governed by a Special Act which, like M.G.L. Chapter 40C, grants the HDC the right to regulate demolitions, new construction, or alterations within a Historic District, but it does not grant the right to determine which buildings should be preferentially preserved.

Obviously, the HDC considers whether a structure is contributing before making a determination about whether it should be allowed to be demolished or altered. But KP Law has advised that the Special Act will need to be modified in order to make Article 62, as currently drafted, enforceable. This is an obstacle to it passing at ATM.

Some will consider Article 62 to be circular and unproductively disruptive; the HDC has the power today to deny a demolition, whereas Article 62 seeks to save buildings by motivating applicants to find creative alternatives, many of which may take up to a year to arrange. Ultimately though, the waiting period could run out and the building could be demolished.

Nonetheless, you have proposed this law, and gathered the necessary public support, because you believe buildings are being demolished that could be saved. In this sense, you are posing a question to our voting community – is our government doing enough to save our historic structures from demolition?

This is an important question. I think most would agree that Article 62 would help save more historic structures. If a majority of voters support a more intensive process to vet demolitions, and therefore support the spirit of Article 62, it would be unfortunate to see it fail due to nothing other than the difficulty of amending the Special Act.

One solution, as pointed out by KP Law, is to designate the Historical Commission the responsible party for determining if a “significant structure” should be “preferably preserved”, something that is within our charter. If you would like to explore this possibility, I would be happy to ask the Historical Commission and the Select Board to deliberate the matter, and consult with the HDC as is appropriate and desired by them.

While we are a newly reactivated group, we have a fully appointed Commission which includes three architects skilled in working with historic buildings. Collectively, we have decades of experience with historic Nantucket. We have held regular monthly public meetings, with a quorum, every month since we were appointed, posting regular minutes. In our capacity as advisors to the Select Board regarding preservation of Nantucket’s Historic Assets, we’ve published multiple reports and guidelines, and commented in detail to the MHC and DOT on two public roadway projects. We have advocated for the hiring of a Preservation Planner, with whom we work closely. We brief the HDC at intervals, and are committed to a productive collaboration with them.

Please let me know how we might assist you in your efforts.

Sincerely,

A handwritten signature in black ink that reads "Hillary Bayper". The signature is written in a cursive, flowing style.

Memo to: NHC Commissioners

From: Hillary H. Rayport, Chair NHC

Re: ATM 2020 proposed actions

The NHC should consider if it wishes to comment on the slate of proposed articles and amendments that will be voted on at Town Meeting in April. Following this memo is the text, comments and a letter on Article 62 (proposed by Mary Bergman). Otherwise, I've listed below the articles that seem to be most relevant to preservation of historic assets and the special visual quality that constitutes our National Historic Landmark. Note this is not an inclusive list. Where another group is chiefly concerned with an article we might also care about, I have chosen to leave it off this list. An example would be affordable housing, or conservation and coastal matters.

Please review the ATM Warrant prior to our meeting. (see link below). Please contact Holly or me if you have any problems locating the information. Andrew Vorce will be joining us for the discussion at our meeting.

Holly has let us know we should have any comments prepared in advance of the Finance Committee's review March 3rd.

The Select Board warrant can be found here:

<https://www.nantucket-ma.gov/DocumentCenter/View/29984/2020-Annual-Town-Meeting--Warrant-as-adopted-by-Select-Board-1222020-PDF>

Article 12: funds for road improvements on Lover's Lane
Article 13: Road improvements on Amelia and Waitt drive
Article 29: Appropriation: Harbor Place / Professional Services

Zoning related: Articles 39 – 61

There is a long list of zoning changes that have implications unknown to me. Of special note in the zoning changes is:

Article 45: list of addresses on Union/Francis/Washington in OHD – changes from Residential to Commercial.

Article 46: expanding Sconset Old Historic District.

Article 48: Swimming Pools – more limits on swimming pools.

Article 49: reduces required rear yard set back from 10 ft to 5 ft for a 50 sq ft or less shed (already allowed for secondary dwelling).

Article 50 – curb cuts – we support and have already provided comment.

Article 51 – fine tuning the 20 day demolition delay procedure (inspector – not just building commissioner) and “registered design professional” can review instead of building inspector. Does this mean the owner's architect can approve?

Article 52: landscape contractor screening. Aggressive use of very large hedges for screening is becoming an issue. Leland cypress grows a foot a year and can grow to 50' in 15 years. England addressed super-tall hedges in 2003 in their "anti-social behavior" act. Should we comment to make a point here? In 139-19, screening of parking lots, it specifies that hedges should not be more than 8'. 132-1 restricts the height of hedges at street corners (for safety re: cars and visibility).

Article 58: Reduce max height in the mid-island overlay district from 40 ft to 30 ft (Val Oliver)

Article 62 (demolition Delay law)

Article 65: Short term rental tax cap: to cap the tax at 10% of the gross rental cost.

Article 67: Banning Rotaries by schools

Article 82 – 89 Are involving Sewer. Sewer planning can have consequences for growth and neighborhood development. Do we want to dig into this?

I. Payment of fees. No building or use permit shall be issued until the fees prescribed by the Board of Selectmen shall be paid to the Building Inspector.

J. Compliance with permit. All work or uses shall conform to the approved application for which the permit has been issued as well as the approved plot plan.

K. Disclaimer of Liability. This Bylaw shall not create any liability on the part of the Town, its departments, boards, officials and employees for any extraordinary hazards and damage from waves during storms, erosion, retreat, settlement, sinking, or subsidence damage that results from reliance on this Bylaw or any administrative decision made lawfully thereunder.

(Rick Atherton, et al)

ARTICLE 62

(Bylaw Amendment: Preservation of Historically Significant Buildings)

To see if the Town will vote to amend the Nantucket General By-Laws by adding a new chapter to the Nantucket town code for the purpose of preserving and protecting significant buildings within the Town as set forth below; and further to authorize the Select Board to file any Home Rule legislation that may be necessary to carry out the purposes of this article.

Title of Bylaw

Preservation of Historically Significant Buildings

Intent and Purpose

This by-law is enacted for the purpose of preserving and protecting significant buildings within the Town which constitute or reflect distinctive features of the architectural, cultural, economic, political or social history of the town and to limit the detrimental effect of demolition on the character of the town. Through this bylaw, owners of preferably preserved buildings are encouraged to seek out alternative options that will preserve, rehabilitate or restore such buildings and residents of the town are alerted to impending demolitions of significant buildings. By preserving and protecting significant buildings, streetscapes and neighborhoods, this bylaw promotes the public welfare by making the town a more attractive and desirable place in which to live and work. To achieve these purposes the Historic District Commission (HDC) is authorized to advise the Building Inspector with respect to demolition permit applications. The issuance of demolition permits is regulated as provided by this by-law.

Definitions

APPLICANT-Any person or entity who files an application for a demolition permit. If the applicant is not the owner of the premises upon which the building is situated, the owner must indicate on or with the application his/her assent to the filing of the application.

APPLICATION-An application for the demolition of a building.

BUILDING-Any combination of materials forming a shelter for persons, animals, or property.

BUILDING COMMISSIONER - The person occupying the office of Building Commissioner or otherwise authorized to issue demolition permits.

COMMISSION - The Historic District Commission (HDC) or its designee.

DEMOLITION-Any act of pulling down, destroying, removing, dismantling or razing a building or commencing the work of total or substantial destruction with the intent of completing the same.

DEMOLITION PERMIT - The building permit issued by the Building Inspector for a demolition of a building, excluding a building permit issued solely for the demolition of the interior of a building.

PREFERABLY PRESERVED - Any significant building which the Commission determines, following a public hearing, that it is in the public interest to be preserved rather than demolished.

A preferably preserved building is subject to the twelve-month demolition delay period of this bylaw.

SIGNIFICANT BUILDING - Any building within the town which is in whole or in part fifty years or more old and which has been determined by the Commission or its designee to be significant based on any of the following criteria:

The Building is listed on, or is within an area listed on, the National Register of Historic Places; or

The Building has been found eligible for the National Register of Historic Places; or

The Building is importantly associated with one or more historic persons or events, or with the broad architectural, cultural, political, economic or social history of the Town or the Commonwealth; or

The Building is historically or architecturally important (in terms of period, style, method of building construction or association with a recognized architect or builder) either by itself or in the context of a group of buildings.

Procedure

No demolition permit for a building which is in whole or in part fifty years or more old shall be issued without following the provisions of this bylaw. If a building is of unknown age, it shall be assumed that the building is over 50 years old for the purposes of this bylaw.

An applicant proposing to demolish a building subject to this bylaw shall file with the

Building Commissioner an application containing the following information:

The address of the building to be demolished.

The owner's name, address and telephone number.

A description of the building.

The reason for requesting a demolition permit.

A brief description of the proposed reuse, reconstruction or replacement.

A photograph or photograph(s) of the building.

The Building Commissioner shall within seven days forward a copy of the application to the Commission. The Commission shall within fifteen days after receipt of the application, make a written determination of whether the building is significant.

A significant building is defined as: any building within the town which is in whole or in part fifty years or more old and which has been determined by the Commission or its designee to be significant based on any of the following criteria:

The Building is listed on, or is within an area listed on, the National Register of Historic Places; or

The Building has been found eligible for the National Register of Historic Places; or

The Building is importantly associated with one or more historic persons or events, or with the broad architectural, cultural, political, economic or social history of the Town or the Commonwealth; or

The Building is historically or architecturally important (in terms of period, style, method of building construction or association with a recognized architect or builder) either by itself or in the context of a group of buildings.

Upon determination by the Commission that the building is not significant, the Commission shall so notify the Building Commissioner and applicant in writing. The Building Commissioner may then issue the demolition permit.

Upon determination by the Commission that the building is significant, the Commission shall so notify the Building Commissioner and the applicant in writing. No demolition permit may be issued at this time. If the Commission does not notify the Building Commissioner within fifteen days of receipt of the application, the Building Commissioner may proceed to issue the demolition permit.

If the Commission finds that the building is significant, it shall hold a public hearing within thirty days of the written notification to the Building Commissioner. Public notice of the time, place and purpose of the hearing shall be posted in a

conspicuous place in town hall for a period of not less than seven days prior to the date of said hearing and the applicant and the building inspector shall be notified in writing of the meeting time and place.

The Commission shall decide at the public hearing or within fourteen days after the public hearing whether the building should be preferably preserved. If agreed to in writing by the applicant, the determination of the Commission may be postponed.

If the Commission determines that the building is not preferably preserved, the Commission shall so notify the Building Commissioner and applicant in writing. The Building Commissioner may then issue the demolition permit.

If the Commission determines that the building is preferably preserved, the Commission shall notify the Building Commissioner and applicant in writing. No demolition permit may then be issued for a period of twelve months from the date of the determination unless otherwise agreed to by the Commission. If the Commission does not so notify the Building Commissioner in writing within twenty-one days of the public hearing, the Building Commissioner may issue the demolition permit.

Upon a determination by the Commission that any building which is the subject of an application is a preferably preserved building, no building permit for new construction or alterations on the premises shall be issued for a period of twelve months from the date of the determination unless otherwise agreed to by the Commission.

No permit for demolition of a building determined to be a preferably preserved building shall be granted until all plans for future use and development of the site have been filed with the Building Commissioner and have found to comply with all laws pertaining to the issuance of a building permit or if for a parking lot, a certificate of occupancy for that site. All approvals necessary for the issuance of such building permit or certificate of occupancy including without limitation any necessary zoning variances or special permits, must be granted and all appeals from the granting of such approvals must be concluded, prior to the issuance of a demolition permit under this section.

The Building Commissioner may issue a demolition permit or a building permit for a preferably preserved building within the twelve months if the Commission notifies the Building Commissioner in writing that the Commission finds that the intent and purpose of this bylaw is served even with the issuance of the demolition permit or the building permit.

Following the twelve-month delay period, the Building Commissioner may issue the demolition permit.

Administration

The Commission may adopt such rules and regulations as are necessary to administer the terms of this bylaw.

The Commission is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this bylaw.

The Commission may delegate authority to make initial determinations of significance to one or more members of the Commission or to a municipal employee.

The Commission may pro-actively develop a list of significant buildings that will be subject to this bylaw. Buildings proposed for the significant building list shall be added following a public hearing.

Emergency Demolition

If after an inspection, the Building Commissioner finds that a building subject to this bylaw is found to pose an immediate threat to public health or safety due to its deteriorated condition and that there is no reasonable alternative to the immediate demolition of the building or structure, then the Building Commissioner may issue an emergency demolition permit to the owner of the building or structure. The Building Commissioner shall then prepare a report explaining the condition of the building and the basis for his decision which shall be forwarded to the Commission.

Enforcement and Remedies

The Commission and/or the Building Commissioner are each specifically authorized to institute any and all actions and proceedings, in law or equity, as they may deem necessary and appropriate to obtain compliance with the requirements of this by-law or to prevent a threatened violation thereof. Any owner of a building subject to this bylaw that demolished the building without first obtaining a demolition permit in accordance with the provisions of this bylaw shall be subject to a fine of not more than Three Hundred Dollars. Each day the violation exists shall constitute a separate offense until a faithful restoration of the demolished building is completed or unless otherwise agreed to by the Commission.

If a building subject to this bylaw is demolished without first obtaining a demolition permit, no building permit shall be issued for a period of two years from the date of the demolition on the subject parcel of land or any adjoining parcels of land under common ownership and control unless the building permit is for the faithful restoration referred to above or unless otherwise agreed to by the Commission.

Historic District Act

Nothing in this by-law shall be deemed to conflict with the provisions of the Historic District Act, Massachusetts General Laws Chapter 40C. If any of the provisions of this by-law do so conflict, that act shall prevail.

Severability

In case any section, paragraph or part of this by-law be for any reason declared invalid or unconstitutional by any court, every other section, paragraph, and part shall continue in full force and effect.

;or otherwise act thereon.

(Mary Bergman, et al)

ARTICLE 63 (Affordable Housing Requirements)

To see if the Town will vote to: To require the Town of Nantucket to create and enforce legislation and regulations to enact and enforce the attachment of the state mandated 10% affordable housing to our local building permit process. 10% of new residence permits issued annually (both year round and seasonal) shall be designated affordable. For each 10 residential permits issued 1 shall be affordable; or otherwise act thereon.

(Andrew G. Lowell, et al)

ARTICLE 64 (Public Property Damage)

To see if the Town will vote to: require the Town of Nantucket through the PLUS department to create and enforce regulations to hold accountable all land owners to repair damage to public property caused by permitted activity. All applicants to the PLUS Department must submit photos of surroundings 500 feet beyond each boundary to a public way areas of concern shall include streets/roads, shoulders, sidewalks, medians and bike paths. These areas shall be inspected and approved before a certificate of occupancy or completion is issued; or otherwise act thereon.

(Andrew G. Lowell, et al)

ARTICLE 65 (Short-Term Rental Tax Cap)

To see if the Town will vote to cap the Short Term Rental Tax on Nantucket at a total of 10% of the gross rental cost. (It is noted that 5.6% of the Tax is the State portion of the tax. Therefore, the Nantucket portion of the Tax would be 4.4%)

; or otherwise act thereon.

(Curtis Barnes, et al)

ARTICLE 66 (Town Meeting Vote Required to Implement On-street Paid Parking)

To see if the town will vote to require a vote of town meeting prior to the implementation by the Town of Nantucket of paid on-street parking.

Mr. Andrew V. Vorce
Director of Planning
January 27, 2020
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zoning authority. But regardless of its ultimate enforceability, such a requirement is, in my opinion, unnecessary, in light of the municipal liability limits provided by Chapter 258 of the General Laws.

Known as the Torts Claim Act, Chapter 258 provides the exclusive remedy for persons with claims against public employers (including municipalities) for injury or loss caused by negligent or wrongful acts or omissions by a public employee while acting within the scope of his or her employment. Among other things, the statute limits the amount of recovery against public employers to \$100,000. But importantly, it also immunizes municipalities from any liability in some circumstances by expressly foreclosing certain tort claims against public employers, including any claims based upon the acts or omissions of a public employee when exercising due care in the execution of any municipal ordinance or by-law; and any claims based upon the issuance, denial, suspension or revocation or failure or refusal to issue, deny or revoke any permit, license, approval or similar authorization. In my opinion, absent highly unusual facts (e.g., if the permit included an express guarantee that there would be no damage to the structure or surrounding land from wind or erosion,) a building permit for construction in or near Shorefront Land falls within such categories, making waivers or releases of claims relative to such a building permit unnecessary.

Article 62 – Preservation of Historically Significant Buildings

Article 62 proposes that the Town adopt a new General Bylaw for the purpose of protecting and preserving older buildings in the Town with significant historic, cultural, or architectural value, by establishing a procedure for imposing a delay on any proposed demolition of such buildings which are “preferably preserved.” The Article also seeks authorization for the Select Board to file any Home Rule legislation necessary to carry out the purposes of the Article. As will be discussed, it is my opinion that adoption of the Bylaw proposed under Article 64 would require special legislation, likely as an amendment to the Special Act that established the Town’s Historic District Commission. Alternatively, the proposed Bylaw may not be necessary given the express authority provided to the Historic Districts Commission under the Special Act to prevent the razing of any structure in the Town-wide Historic District

The proposed Bylaw appears to be based upon a model that has been adopted in numerous Massachusetts cities and towns. The Bylaw proposed under Article 64 differs in one important respect from most of the building preservation bylaws in effect in other communities, however. While the majority of these bylaws are administered by the local historical commission, independently from the regulation of historic districts by the local historic district commissions, the Article 62 Bylaw proposed for Nantucket would be administered by the Historic District Commission. This distinction matters because, while the powers and duties of historic district commissions in most other communities are set forth in the general law under which those historic district commissions were established (G. L. c. 40C), Nantucket’s Historic District Commission is governed by the Special Act which established it, Chapter 395 of the Acts of 1970, as amended (the “Special Act”).

Both Chapter 40C historic district commissions and the Nantucket Historic District Commission have similar powers and duties with respect to regulating any new construction or alterations proposed within the boundaries of historic districts through the certificate of appropriateness process. Neither

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legislation, however, specifically grants other powers and duties, or sets out procedures to be used for determining significant or preferably preserved buildings and delaying demolition of same. This is likely why these procedures are administered by the local historical commission in most communities. A local historical commission established pursuant to G.L. c. 40, § 8D is charged under that statute with the inventory, preservation and development of historical assets of the municipality and is given the power to acquire and manage such assets.

In those municipalities that do provide for a demolition bylaw to be administered by the historic district commission, it should be noted that Chapter 40C expressly allows a city council or town meeting to assign other powers and duties to an historic district commission established thereunder, and to permit such an historic district commission to also have the powers and duties of an historical commission per G.L.c.40, § 8D. The Special Act, however, does not contain a similar authorization. Therefore, if the Town wishes to enact the proposed Bylaw to be administered by the Historic District Commission, it is my opinion that additional special legislation is needed to expressly include this specific authority and process.

However, it is also my opinion, that without the proposed Bylaw, the Historic District Commission already has ample authority to control the demolition of any significant structure in the Town pursuant to Sections 6 and 9 of the Special Act. Section 6 provides that no building or structure within the Historic District shall be razed without approval by the Commission, and expressly empowers the Commission “to refuse such a permit for any building or structure of such architectural or historic interest, the removal of which in the opinion of said Commission would be detrimental to the public interest of the Town of Nantucket or the Village of Siasconset.” Section 9 also expressly provides that, in addition to the function and duty to pass upon the appropriateness of exterior features to be erected, reconstructed, altered or restored, “[i]t shall also be the duty of the Commission to pass upon the removal of any building” as set forth in Section 6. In my opinion, although the Special act does not authorize the type of demolition delay process set out in the proposed Article 62 Bylaw, it does presently permit the Historic Districts Commission to refuse approval of demolition in cases where the Commission deems the building to be of significant architectural or historic interest.

Article 63 – Affordable Housing Requirements

Article 63 asks the Town to vote to require the Town to create and enforce legislation and regulations requiring that 10% of permits issued annually for new residences be designated “affordable,” and that for each 10 residential permits issues, one shall be affordable. In my opinion, a vote under this Article would not be binding, as one Town meeting may not bind or commit a future Town Meeting to taking particular actions.

Moreover, it is doubtful that a bylaw imposing a mandatory affordability requirement on otherwise, by-right, residential building permits would be lawful. Such a requirement would be vulnerable to constitutional challenges, in my opinion. Even with a valid public purpose, absent a direct nexus between the requirement and the particular properties burdened, courts are reluctant to allow bylaws to allocate the burdens of achieving such purpose to some property owners, while permitting other property owners to avoid those same burdens,. This is why most inclusionary housing requirements are