

Nantucket Planning Board DRAFT Minutes
Remote Participation via Zoom Webinar
February 7, 2022 @ 4:00 PM.

Board Members: John Trudel, III (Chair), David Iverson (Vice-Chair), Nat Lowell, “Fritz” McClure and Barry Rector

Alternates: Stephen Welch and Campbell Sutton

Staff: Andrew Vorce (Planning Director), Leslie Snell (Deputy Director of Planning), Meg Trudel (Land Use Planner) and Catherine Ancero (Administrative Specialist)

To view a recording of the meeting, use link below:

<https://youtu.be/3nvvO4u7LOg>

I. Call to order:

Chair Trudel called the meeting to order at 4:02PM. Read the prepared statement as to how the meeting would be conducted via remote participation and the ground rules for any discussion and called for those present.

Vote taken by Roll Call:

Vice-Chair David Iverson *Aye*

Nat Lowell *Aye*

Fritz McClure *Aye*

Barry Rector *Aye*

Chair Trudel *Aye*

Alternates:

David Callahan *Aye*

Stephen Welch *Aye*

Campbell Sutton *Aye*

Staff:

Meg Trudel *Aye*

Catherine Ancero *Aye*

Leslie Snell *Aye*

Andrew Vorce *Aye*

II. Approval of the agenda:

Mr. Rector moved to approve the agenda. The motion was duly seconded by Mr. Lowell and the motion was carried unanimously.

Vote taken by Roll Call:

Barry Rector *Aye*

Nat Lowell *Aye*

Vice-Chair David Iverson *Aye*

Fritz McClure *Aye*

Chair Trudel *Aye*

III. Planning Board Motions and Comments (if needed)

IV. *Not Anticipated by the Chair within 48 Hours* – Re-Endorsement of Maple Lane Subdivision Plans Different Board due to a previous board due to Judy.

The reason being for re-endorsement of plans the Board had endorsed these already however had to make up of a different Board and that was with our previous Chair Judith. Need to re-endorse with new members.

Motion/Vote: Mr. Lowell moved to re-endorse the Maple Lane Subdivision plans. The motion was duly seconded by Vice-Chair Iverson and the motion carried unanimously.

Vote taken by Roll Call:

Nat Lowell *Aye*

Vice-Chair David Iverson *Aye*

Fritz McClure *Aye*

Barry Rector *Aye*

Chair Trudel *Aye*

V. Public Hearings – Warrant Articles:

- **Article 53 - Zoning Bylaw and Map Amendments** to make changes to the definitions in Section 2A of “Accessory Dwelling” to increase the maximum size from 550 square feet to 800 square feet, “Apartment” to clarify where apartments may be located on a commercial property, “Take-Out Food Establishment” to include food trucks, and “Tent” to allow extensions of allowed time periods by special permit; to add a special permit allowance in Section 16D to waive compliance with the “regularity factor” required for lots; to amend Section 20.1B(2)(h) to include tertiary dwellings and garage apartments and to remove the reference to the Rules and Regulations Governing the Subdivision of Land; to place portions of properties located on Beach Grass Road and Old South Road currently located in the Commercial Neighborhood (CN) district in the Residential 5 (R5) district; and to place a portion of property located on Beach Grass Road currently located in the Residential 5 (R-5) district in the Commercial Neighborhood (CN) district. (*Planning Board Sponsored*)

Chair Trudel opened the floor to the public. **Emily Molden** – Nothing in here that would guarantee that the type of subdivision or lot creation or housing from Special Permit weaving the regularity formula preventing it from being additional market rate lot housing. **Mrs. Snell** – clarify that the paragraph in the article is to recommend article 53 with item #3 removed. **Chair Trudel** stated correct.

Motion/Vote: Mr. Lowell moved to close the public hearing. The motion was duly seconded by Mr. McClure and the motion carried unanimously.

Vote taken by Roll Call:

Nat Lowell *Aye*

Barry Rector *Aye*

Vice-Chair David Iverson *Aye*

Fritz McClure *Aye*

Chair Trudel *Aye*

Motion/Vote: Vice-Chair Iverson moved to give a positive recommendation with the removal of item #3. The motion was duly seconded by Mr. Lowell and the motion carried unanimously.

Vote taken by Roll Call:

Vice-Chair David Iverson *Aye*

Nat Lowell *Aye*

Fritz McClure *Aye*

Barry Rector *Aye*

Chair Trudel *Aye*

- **Article 52 - Zoning Bylaw Amendment** to amend Section 8D to add a Special Permit allowance for Workforce Housing Homeownership in the R-10 zoning district. (*Planning Board Sponsored*)

Mrs. Snell – This is for the Workforce Housing Ownership provision in the bylaw. The request came through the Affordable Housing Trust Fund to look into adding additional districts where there is allowed. The article proposes to add the Workforce Housing Special Permit provision to the R-10 and changed the bonus factor from 1.33 which is in R-5 to 1.2 and R-10 and that would allow two lots.

Andrew Vorce – Leslie said two lots and the correct calculation is three. Equivalent of three lots to qualify and that would give a bonus. **Chair Trudel** opened the floor to the public. **Brook Mohr** - As a member of the Affordable Trust stated that to make the development of Workforce Housing particularly under Special Permit encourage deed restricted year-round housing and with that bonus option is very important to making the development more affordable both to private developer and to the Housing Trust. or housing developer. Great idea. **Brian Sullivan** – Member of the Affordable Housing Trust Fund echo Brooks comments.

Motion/Vote: Mr. Rector moved to close the public hearing. The motion was duly seconded by Mr. McClure and the motion carried unanimously.

Vote taken by Roll Call:

Barry Rector *Aye*

Fritz McClure *Aye*

Vice-Chair David Iverson *Aye*

Nat Lowell *Aye*

Chair Trudel *Aye*

Motion/Vote: Mr. Rector moved to give a positive recommendation. The motion was duly seconded by Mr. McClure and the motion carried unanimously.

Vote taken by Roll Call:

Barry Rector *Aye*

Fritz McClure *Aye*

Vice-Chair David Iverson *Aye*

Nat Lowell *Aye*

Chair Trudel *Aye*

- **Article 42 - Zoning Bylaw Amendment** to define “Short Term Rental”; to allow the Planning Board to prohibit “Short Term Rentals” in “Apartment Buildings” (Section 2A) and “Workforce Housing” (Section 8D) as a condition of a Special Permit; and to clarify/exclude “Short Term Rentals” as a room rental/s within an owner-occupied dwelling unit. (*Planning Board Sponsored*)
- **Article 43 - Zoning Bylaw Amendment** to define “Short Term Rental” and to allow “Short Term Rental” as an “Accessory Use” in all residential zoning districts, subject to criteria as specified in the article. (*Citizen Sponsored – T. Glidden*)

Discussion for both Articles 42 and 43:

Chair Trudel stated that he will be recusing on the advice from the Commonwealth of Massachusetts and Board of Ethics for a potential of conflict of interest in the future for any future comments that I would make because being a licensed real estate professional so any comments that he makes could construed in a different way. He will be signing off and handing over to Vice-Chair Iverson who will be acting as Chair. All comments go through the Chair and reminding everyone and the public to be respectful and remember they are all neighbors working for a common goal.

Acting Chair David Iverson stated that he will be opening the meeting for both Articles 42 and 43 for public discussion.

Andrew Vorce – Joining us is Robin Stein from KP Law who assist in developing these bylaws and may want to weigh in and assist. Article 42 was developed by Staff and it was developed in conjunction with the non-zoning bylaw articles which are Articles 39, 40 and 41. It was intended to be adopted together but because different in terms of who recommends them and the quantum of vote they are separate articles. Suggested that the Planning Board could be structured to support Article 39. There are three sections to

Article 42. The first section amends definition of section 2, that prohibits short-term rentals in all or portion of the dwelling units and in addition it also clarifies that these short-term rentals are allowed by right as a principal use. The second section is regarding the Planning Board putting a condition for short-term rentals in Workforce Housing projects. The last amends section 15 about accessory uses which the intent of this is to allow a long-term practice which is the rental of rooms within a dwelling unit. There was a discussion of the length of stay of the occupants. Article 43 that there are other factors, the Act of 2018 talks about what can be regulated by a community however what's in that law references a Bylaw, but it does not reference a Zoning Bylaw or a General Bylaw. It talks about inspections penalties for violations, reasonable fees, a provision about not outstanding enforcement actions, distance of and location of operators, regulating the class number of days should be put in the General Bylaw. Article 39 authorizes the Board of Health and the Select Board to develop their input. The Town took extra step to create a segregated account where fees and fines can be deposited, and this does not go into the general funds. **Acting Chair Iverson** asked in Article 39 what is the scope of the restrictions that Planning Board could apply to short-term rentals. **Robin Stein** – When looking at regulating new uses they have both land use component also kind of the functionality component. Try to draw the line where zoning is regulated. The functionality component. Acting Chair Iverson stated that through Article 39 the Town the Planning Board can restrict the amount of time can be rented or how it functions. **Stephen Welch** – Disclosed for the record like John Trudel that he is a licensed real estate broker and a licensed realtor however unlike John as currently defined as a short-term rental I am not nor has my firm been involved with any short-term rentals in the recent past nor do we anticipate it in the recent future so I'm comfortable to continue the discussion. **Fritz McClure** – Two questions for Robin. Could the Planning Board limit under the general bylaw if the Board decided to exclude short-term rentals from certain areas of the Town or the island can Board do that through the general bylaw. **Robin Stein** – Her recommendation is that it should be done through a Zoning Bylaw because its specifically talking about regulating land uses. **Mr. McClure** – Second question under the general bylaw who can offer short-term rentals. **Robin Stein** – Depending on the nature of the regulation. **Mr. McClure** - Third question, if the Board chose to in the general bylaw improve the restrictions how many days a year a short-term rental could be rented. **Robin Stein** – It could be done through the general bylaw. **Andrew Vorce** – A little confusion here. Robin explain the different methods of enforcement of the zoning bylaw and the general bylaw. **Robin Stein** – If somebody is in violation for zoning the Building Commissioner can do an enforcement action under the statue of the bylaw. The Town can do a fine process and a civil penalty for violations. **Mr. Vorce** – Enforcing the bylaw through the Building Commissioner enforcement procedure more effective, happens quicker through personal as imposed to the Building Commissioner. **Mr. McClure** – Clarification what would be the procedure under the general bylaw which limits the number of days for short term rentals. **Robin Stein** – The Bylaw contemplates that the Board of Health is going to promulgate regulation. **Mr. Vorce** – Issue that keeps coming up whether the uses are legal or affected as grandfathered or pre-existed non-conforming use. There can be future amendments. **Campbell Sutton** – The Bylaw does not address number of homes owned by an entity in Article 42 that is going to address more of the investment owners. **Andre Vorce** – It doesn't because it is about the use of the property not about who owns it. **Acting Chair Iverson** asked if the Board could create more regulation s through the Town and not relying on the Health Department and the Select Board. **Robin Stein** – Planning Board can amend if Article 39 passes as a Bylaw the Board can amend in the future. **Stephen Welch**- Question about nuisance 1, 2, 3 Section 123-4 under the regulations. Acting Chairman Iverson opened the floor to the public. **Tobias Glidden (The Proponent for Article 43)** – Been having conversation over the past two years. Been a long-time housing advocate and with the support of the Planning Board I spearheaded the effort to pass the neighborhood first program which provided 20 million dollars to invest in island housing. He is the proponent for Article 43 that would amend Nantucket zoning bylaw to allow short-term rentals as an accessory use in all residential districts. With year-round residents and seasonal residents who are concerned about protecting resident's rights to short-term rent their homes while protecting neighborhoods from the expansion of commercial short-term rental enterprises within residential neighborhoods. **Mrs. Snell** – Dwelling units that are in commercial districts would not be allowed to be rented as a short-term rental. in commercial districts. Is that your intention. **Tobias Glidden** – No, the accessory use short-term rental shall be permitted as an accessory use in all residential districts nothing to do with commercial districts it's only addressing residential zoning and by not addressing the other districts it effectively prohibits them. **Acting Chair Iverson** opened floor to the public. **Gail Nishimura**

– Question about Article 43 regarding the nonresidents can get a Special Permit to rent as if it's determined to be an accessory use. If it follows the same definition as Article 42 where as if the owner occupied the house or dwelling for cumulatively 90 days, then any rental after that is accessory and then second part of the questions is how it confirmed their occupancy for the 90 days. **Tobias Glidden** – It is not defined and it's something I want to come together as a community and through the ZBA process to give a fair handshake in my determination. **Henry Sanford** – Question of how to reconcile who short-term rent can. Too complex of an issue to be casual about. **Bob and Virginia Vidoni** – Struggling clarification with grandfathered or pre-existing legal uses. **Edward Sanford** – The definition section should be consistent with the State definition which is less than 32 days. **Kathy Baird** – I have a house out on Tom Nevers and have been short term renting it when I lost my job in 2015. Don't live there year-round, come to Nantucket two to three months a year which is spread out. Wanted to applaud the Town for taking a stand, taking a proactive stance on the issue and writing a potential bylaw to codify the traditional uses and setting up a framework for regulations in the general bylaw. **Melissa Philbrick** – I applaud the article about the general bylaw that sets up procedure through the Board of Health to adopt regulations. Thinks it's a great idea and it's the right way to go. Feels that there needs to regulate short-term rentals. **Robin Nydes** – Articles 42 and 43 debate appears to be a re-litigation of Article 90. Reading the Planning Board packet, the Planning Board department under Andrew has done a commendable job of trying to move on from Article 90 and to recognize the historic use of short-term rentals. **Brooh Mohr** – Having a hard time understanding the intersection of the regulatory bylaw with the blanket codification of short-term rentals. What would be allowed under that regulatory bylaw as it's written. **Bob Kargman-Home** at 8 Mill. Question about processing and urgency. What is the rush and why when there are so many issues and need more data for short-term rentals. Suggest forming a committee. **Steven Leinbach** - If Article 42 passes as written does that mean every house every residence on Nantucket is grandfathered to be used as a short-term rental whether it's registered with the Town or the State. **Andrew Vorce** – The grandfathering must be used; the property must be in use for short term rental. The use becomes allowed by right and there would have to be licensing process to register the short-term rental and it is a legal use, grandfathering doesn't come in under Article 42 unless the bylaw changed in the future. **Rick Atherton** – Hopes that Article 42 gets defeated and if not the clear-cut implication for our realtor and our investor friends is that we're open and welcoming short-term rental and investor real estate. Will continue to have concern on the conversion of the housing stock from year-round uses it be rental or owner occupied. **John Kitchener** – Have heard on both sides the lack of data not enough data for me to form an opinion and year-round resident and a voter. Ask the Nantucket data that would help understand the situation and therefore be able to make a more informed decision. **Andrew Vorce** – The data situation is one of the reasons behind the registration the need for the local registration. **Georgia Raysman** – This is a very important issue there are critical element in the housing and the general atmosphere on Nantucket in the last couple of years. glad finally dealing with short term rentals. Article 42 makes the entire island a potential business area not a neighborhood. **Galen Gardner** – Happy to make it legal however do not like all the restrictions. In the fog of the data that people brought up. Would like to know the data for year-round housing to short-term rentals to private residence. Would like to know how much money the Town take per year in short-term rentals and do they keep track of it or how do they keep track of it. Can the Town live without short-term rentals? Not sure as to how the Health Department is going to regulate and are you going to start regulating all other businesses on Nantucket, so they can operate for 180 days a year or is it going to regulate how many clients they can have. Would like to know how many off island or absentee owners are there that are renting short-term rentals. **Gary Beller** – Chair of the Advisory Committee for nonvoter's tax payers. Have been following the discussions for the last year or two the short-term rentals and we did take a position last year. They have not met on the new proposal however parts of it are unacceptable to us. What would bother us would be the Planning Board to approve the proposal for Article 43 which discriminates against non-voting taxpayers. It is an unfair discrimination and that the Planning Board should not be endorsing any proposal such as Article 43, discriminating against seasonal taxpayers. Ok with the proposal for Article 42 because it doesn't have any discriminatory provisions. **Anne Dewez** – The real issues but have not focused on is you cannot regulate a community, you can't make rules about a community that is many ways unique on Nantucket. Article 42 doesn't discriminate which leaves everything open to anybody who wants to come and make money, and these are the kinds of owners who are destroying our little neighborhood communities. Article 43 is not perfect, there may be ways to improve but it at least recognizes what is happening to our individual communities.

John Belash – A full time resident for 25 years and have owned a house out in Sconset for 28 years which I maintain with the sole reason to make available for my family for their vacation and when they do not use it for vacation I then rent it out as I can to carry the cost. I have never have yet turn a profit in 25 years and Article 43 would prohibit from renting. **Tobias Glidden** – The way the article is written currently he is correct it would prohibit him from renting. The intention is that its main primary residence and hope that he might consider renting it out to a teacher to enable your short-term rental to continue. **Chris Bevis** – Owns a house and they use some of the year and rent out part of the year. They want to outlaw corporate ownership then the article should be craft in that way. **Penny Dey** - One of the things missing throughout this entire discussion is fact-based information. **Deanne Atherton** - Does Article 42 require a 2/3 of a vote at town meeting. **Mr. Lowell** – Yes. **Deanna Atherton** – Article 39 which is the registration article be presented and recommended without Article 42 at this Town Meeting? can article we do need to have the members of the Planning Board and Select Board exert leadership help sort this through. **Mr. Lowell** – It would be up to Planning Board and the Finance Committee. **Deann Atherton** – Would like to consider where to draw the line. This is not easy for people to understand. At the time Chair Judith Wagner as reported in the minutes said it’s very important that the community discuss short-term rentals and I have sat here listening to this first public hearing since 4:00 o’clock and what’s obvious to me is that we do need to have you members of the Planning Board and the members of the Select Board exert your leadership and bring us together to find a way forward that we can all understand. **Tobias Glidden** – appreciate the debate and discussion and thanked the Board. **Mr. Vorce** – put on the record does not appreciate the comment about the process. Spent a lot of time gathering information for you all to discuss. Do not appreciate the comments that staff has done anything wrong here. **Mr. Lowell** – When would these articles go into effect when passed at Town meeting. **Vorce** – On the date of when they are voted after the Attorney General approves them, we can set an outside date. Have done in the past for example with the swimming pool articles. This will give people a chance to move and wrap up permitting.

Motion/Vote: Mr. Lowell moved to close the public hearing for both Articles 42 and 43. The motion was duly seconded by Mr. Rector and the motion carried 3-1 (Mr. McClure opposed).

Vote taken by Roll Call:

Nat Lowell *Aye*
Barry Rector *Aye*
Fritz McClure *Nay*
Acting-Chair David Iverson *Aye*

Mr. Rector questioned why Mr. McClure voted no.
Mr. McClure stated that he stated his reason and don’t need to respond.

Mr. Lowell – This an unfortunate situation. We have four continuous issues going on in Nantucket. fighting against each other.

Motion/Vote: Mr. Lowell moved that Article 42 be adopted provided that Article 39 is adopted by Town Meeting and that the invent that Article 39 is not adopted at Town Meeting we recommend the following move that Article 42 be referred to the Planning Board for further study. The motion was duly seconded by Mr. Rector and the motion carried 3-1 (Mr. McClure opposed).

Vote taken by Roll Call:

Nat Lowell *Aye*
Barry Rector *Aye*
Fritz McClur *Nay*
Vice-Chair Iverson *Aye*

Motion/Vote: Mr. Lowell moved to take no action for Article 43. The motion was duly seconded by Mr. Rector and the motion carried 3-1 (Mr. McClure opposed).

Vote taken by Roll Call:

Nat Lowell *Aye*

Barry Rector *Aye*

Fritz McClure *Nay*

Vice-Chair Iverson *Aye*

VI. Other Business:

• **Draft Planning Board Motions/Comments-FYI Only**

Mrs. Snell – The draft Planning Board motions for the articles for which the Board already closed the public hearing and taken a vote she's added some draft comments on some of the articles. Mrs. Snell asked that the Board review and send her any comments. These will be on Monday's agenda to discuss relative to the motions and comments. The Finn Comm hearing to discuss the Planning Board motions and comments will be Tuesday the 15th.

• **Regular Planning Board meeting Monday, February 14, 2022 @ 4:00PM via Zoom**

V. Adjournment:

Mr. Rector moved to adjourn the meeting at 7:55PM. The motion was duly seconded by Mr. Lowell and the motion was carried unanimously 4-0.

Vote taken by Roll Call:

Barry Rector *Aye*

Nat Lowell *Aye*

Fritz McClur *Aye*

Vice-Chair Iverson *Aye*

Submitted by

Catherine Ancero