

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
HOUSING APPEALS COMMITTEE

SURFSIDE CROSSING, LLC,

Appellant,

v.

NANTUCKET ZONING BOARD OF
APPEALS,

Appellee.

Case #: 2019-07

PRE-FILED TESTIMONY OF DIANE COOMBS

1. My name is Diane Coombs. I am competent to give this affidavit and have personal knowledge of all facts contained herein except for those facts stated upon information and belief, which facts I am informed and believe are true and accurate.

2. I served as an alternate member of the Nantucket Historic District Commission (“HDC”) in 2010, was elected and have served as a Member since 2011, and was Chairperson from 2015 to 2021. I comment here concerning the non-compliance of the current version of the proposed Surfside Crossing development project (“Project”) with the Historic District Commission Act, Chapter 395 of the Acts of 1970, as amended (“Act”), and with Nantucket’s Historic District Commission Bylaw, Chapter 124, §§ 8-13 (“Bylaw”), which the HDC is charged with implementing, and the Project’s harmful impact on its residential neighbors and abutters. The non-compliance cannot be resolved without significant alterations to the size, density and configuration of the proposed project.

3. I have been a full-time resident of the Island since 1976.

4. Among other schools and universities, I attended the Boston Architectural Center, and worked for 12 years as an Associate to renowned Boston architect Harold Field Kellogg. I have served on the HDC since 2010. In addition to this architecture-specific training and experience, I have had extensive exposure to and experience regarding Nantucket's neighborhoods and environment, not only as a long-time resident, but also as the owner and operator of a small business on Nantucket, as a long-time mail carrier on the Island (and former President of the National Association of Letter Carriers), and as a member of Nantucket's Planning Board, Tree Committee, Solid Waste Advisory Committee, and other local government committees.

5. My observations and opinions are based upon my education, training, and experience in the fields of architectural design and local regulation of architectural design and construction on Nantucket in relation to the Island's built and natural environments, as well as my personal observations and experience in the capacities noted above.

6. As a member of the HDC at the time, I testified at hearings of the Nantucket Zoning Board of Appeals concerning the Project as it was then proposed and presented by the developer (156 units of mixed single-family and multi-family housing and appurtenant roadways, structures, fixtures, and landscaping). I believed then and believe now that the Project failed and now fails to comply with the HDC Act and Bylaw.

7. For purposes of my present testimony, I have reviewed the following materials:

- HDC Act as amended, and Bylaw (copies attached here);
- Nantucket Historic District Commission Recommendation to the Nantucket Zoning Board of Appeals, 106 Surfside Road 40B Application, dated 7/17/18 [Exhibit 57];
- Determination of Insubstantial Change, dated July 31, 2020;

- Site Development Plans for 156-unit Condominium Development entitled “Surfside Crossing a Proposed 40B Development in Nantucket, Massachusetts,” dated February 15, 2018, with revisions through February 28, 2020, prepared by Bracken Engineering, Inc. [Exhibit 3];
- Architectural Plans for 156-unit Condominium Development [Exhibit 4];
- Comprehensive Permit Plans prepared by Bracken Engineering, Inc., entitled “Surfside Crossing” dated February 15, 2018 [Exhibit 7];
- Architectural Plans/Floor Plans prepared by Emeritus, prepared for Surfside Crossing, LLC, dated February 15, 2018 [Exhibit 8]; and
- Excerpt of Assessor’s Map depicting locations of the proposed Project Site and the properties of Zimicki, Meredith, Weinhold, and Perry.

8. Of note for my testimony, the South Shore Road neighborhood – which contains the Project Site as well as the residential properties to its south – is more rural in character, feel and construction than much of Nantucket, and is less dense than most developed areas on the Island. It is dominated by shingled single-family houses, horse barns, sheds, and similar structures, most of which are generously spaced and screened from one another and from the few nearby roads and travelled ways. A notable exception is part of the Sherburne Commons housing development.

9. The only approved vehicular access into and out of the neighborhood is via South Shore Road, which effectively is a dead-end street. This limited access underscores and contributes to the relatively rural and quiet character and feel of the neighborhood. The Project Site and abutting properties are dominated by scrub pines and similar trees and vegetation.

10. The current version of the development proposes to clear-cut most existing native vegetation in favor of some new trees and plants.

11. From the Determination of Insubstantial Change, I understand the developer proposes 156 units comprising 283 bedrooms in eighteen (18) buildings of multi-family housing, with no single-family houses. (This contrasts with a previously-proposed project of 389 bedrooms in 60 single-family dwellings and 96 multi-family units, which was addressed by the HDC Recommendation letter in July 2018.) The present Project proposal also comprises appurtenant structures and recreational buildings, including a large community building, primarily clustered in the center of the development.

12. Rear-yard and side-yard setbacks for proposed condominium buildings vary from 25 feet to occasionally 44 feet, including at the locations closest to the Zimicki, Meredith, and Weinhold properties. Condominium buildings 10 and 11 would abut the Zimicki property. Condominium buildings 11, 12, 13 and 14 all would directly face the Meredith property, which shares with the Project site two boundaries of about 175 feet and 250 feet. A substantial parking area for 10 vehicles (forming the base of an elongated “U” of on-site roadways, which themselves would contain an additional 41 and 32 vehicle spaces) would directly abut the northern property line of the Weinhold property, which also would abut Condominium building 14. A pea stone walking path joining that 10-vehicle parking area to building 14 would be located about 10 feet from the Weinhold property line. The developer has requested the waiver of all screening requirements for the Project’s proposed 291 parking spaces.¹

¹ As the Determination of Insubstantial Change notes, “the Board does point out that in the new configuration, [parking] spaces are ‘close to the property line, with a diminished buffer,’ and that the developer has requested the waiver of any screening requirement. May 13 Board Letter, p. 3-4”.

13. The proposed condominium buildings would be 32 feet tall, as measured from ground level (or 7 % taller than originally proposed).

14. In addition to being subject to protection and historic review according to state statute, Nantucket is the largest community listed on the National Register of Historic Places.

15. The purpose of the HDC Act is recited in Section 2 of the Act, which states:

The purpose of this Act is to promote the general welfare of the inhabitants of the Town of Nantucket through the preservation and protection of historic buildings, places and districts of historic interest through the development of an appropriate setting for these buildings, places and districts and through the benefits resulting to the economy of Nantucket in developing and maintaining its vacation- travel industry through the promotion of these historic associations. (emphasis added)

16. Section 4 establishes the Nantucket Historic district to consist of “the land and waters comprising the Town of Nantucket,” hence the entire Island.

17. Section 5 prohibits construction of any building or structure “unless and until” an application is made and reviewed by HDC and a certificate of appropriateness is issued for its exterior architectural features, or a certificate of non-applicability is issued for the construction. No building permit may be issued absent a certificate of appropriateness.

18. Section 9(b) of the Act provides:

The Historic District Commission, in passing upon appropriateness of exterior architectural features in any case, shall keep in mind the purposes set forth in Section 2 and shall consider, among other things, the general design, arrangement, texture, material and color of the building or structure in question, the location on the lot and the relation of such factors to similar features of buildings and structures in the immediate surroundings and the position of such building or structure in relation to the street or public way and to other buildings and structures. In the case of new construction or additions to existing buildings or structures, the Historic District Commission shall consider the appropriateness of the size and shape of the building or structures both in relation to the land area upon which the building or structure is situated and buildings and structures in the vicinity, and the commission may in appropriate cases impose dimensional and setback requirements in addition to those required by applicable by-law.

[Amended by St. 2000, Ch. 57] (emphasis added)

19. Commenting on the Project as then proposed, the HDC wrote to the Board of Appeals in July 2018: “The commission feels that 6 multi-family proposed condo buildings are grossly out of scale and character in this residential neighborhood. The buildings will destroy the natural landscape of the area and will be substituted by over-scaled buildings, expansive paved parking areas and landscaping not native to the area. . . . The buildings lack additive massing, the gambrel connected massing is nothing like anything on Nantucket, and the buildings are simply big masses connected with small connector pieces.”

20. I concurred in that opinion at the time. I believe even more strongly now that the currently proposed eighteen (18) condominium buildings would be grossly out of scale and character with the immediate neighborhood in their bulk, height, density, style, and appearance. They would be expansive, tall, repetitious, and very closely spaced. Whereas the neighborhood has long been composed of well-spaced and varied homes, the new development would comprise a large number of commercial-scale buildings up against one another. There would be little if any variation in their style or arrangement. This is inconsistent with the historic variety of architecture on Nantucket and in this particular neighborhood, a characteristic which the Act identifies as an important consideration in preserving the character of the Island for cultural and commercial reasons. The overall scale and appearance of the proposed buildings would be inconsistent with the prevailing architectural character and scale of the town center of Nantucket, much less that of the low-key residential South Shore Road neighborhood.

21. In 2018, the HDC commented upon and noted concerns and recommendations for the single-family dwellings that were part of the Surfside Crossing proposal at the time. While the close clustering of those 60 dwellings was of special concern, they at least

represented an improvement over and some variety from the proposed six multi-family buildings. The current proposal eliminates all single-family dwellings, and triples the number and concentration of repetitious multi-family buildings. The current proposal thus exacerbates a design approach that already was very problematic and inconsistent with Nantucket's uniquely historic built and natural landscape. It would cast an artificial suburban shadow on a neighborhood that, if anything, is quintessentially rural Nantucket.

22. As noted above, the Project's expansive paved areas, including nearly 300 parking spaces, also are not in keeping with the local environment.

23. Moreover, the setbacks of the proposed Condominium buildings from the abutting properties of Weinhold, Meredith, and Zimicki are too little to alleviate the negative impacts of so many large, uniform apartment buildings. A setback of 25 feet, for example, is less than the height of one of the Condominium buildings itself. The looming presence of the new buildings for those neighbors undoubtedly would be compounded by the hive of activity associated with them, most notably headlights of cars regularly travelling and parking along the Project's internal driveways adjacent to and pointing directly at the abutting residences.

24. Such intrusive local impacts are part of the adverse architectural and construction design effects which the HDC Act has authorized the HDC to prevent. Yet, the Project in its current form has evaded review and consideration by the ZBA, and the Project has never been subjected to direct review by the HDC.

25. In addition, in the case of large-scale projects such as this, the HDC is authorized to and does review lighting design, consistent with Nantucket Bylaw section 102 and Nantucket's "dark skies" program. If the Project were submitted to the HDC for review, it would not satisfy those requirements, in part due to the number and height of the proposed tall

lighting poles and fixtures. When the developer's project was heard by the Board of Appeals, the final decision kept the dark skies program intact but failed to issue either a certificate of appropriateness or a certificate of non-applicability. The project instead was issued a "waiver" of compliance, relief that is not permitted under the HDC Act.

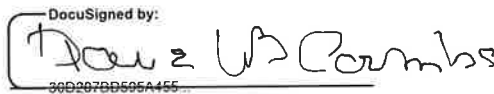
26. Finally, as the HDC's Recommendation letter to the ZBA had noted, placing a proposed Project of this major scale and high density in the same neighborhood which already hosts another affordable housing complex (albeit one designed much more palatably) would give "the overall impression to the community of a de facto encampment . . . [whereas] the ideal placement of complexes such as this would be more randomly situated island-wide so as to give a better sense of social integration with the community at large." That impression would be hugely amplified, not reduced, by the developer's current plan to jettison all single-family dwellings in favor of fully eighteen (18) multi-family buildings.

27. At bottom, the nature, scale, and design of the Project as currently proposed and presented are grossly inconsistent with the character and scale of the South Shore Road residential neighborhood and of the Weinhold, Meredith, Zimicki, and Perry properties. They do not comply with the HDC Act or Bylaw, and would not be approved if ruled upon by the HDC. In very real-life terms - in addition to its important logistical and public-safety impacts - the Project would dramatically and irretrievably alter the architectural and cultural integrity of the neighborhood. This is disturbing and improper from the standpoint of the statutorily-mandated protection of Nantucket's unique historic architecture and natural environment.

28. Based upon my years of experience viewing and evaluating buildings and projects on Nantucket, it is my professional opinion that the proposed Surfside Crossing Project as currently configured and presented by the developer fails to comply with the HDC Act and

Bylaw and that, if the project were to come before the HDC, it would not be granted a certificate of appropriateness necessary for its construction. In light of the declared purpose of the Act, it also is my opinion that the Project would diminish, not preserve or promote, the historic character and appearance of the buildings and environment that characterize the Surfside and South Shore Road neighborhood in which the Project would be situated, including the structures and environment of the residential properties abutting the Project Site.

SWORN AND SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY
THIS 14TH DAY OF JANUARY, 2022.

DocuSigned by:

30D2B7BD695A455
Diane Coombs

Chapter A301. Special Acts

Article II. Text of Selected Special Acts

§ A301-4. Historic District Commission.

ACTS, 1970. CHAP. 395

AS AMENDED BY ACTS: 1972, CHAP. 708; 1984, CHAP. 300; 1985, CHAP. 291; 1987, CHAP. 735; 1989, CHAP. 333; 1990, CHAP. 314; 1998, CHAP. 193; 2000, CHAP. 57; 2002, CHAP. 90; 2010, CHAP. 8; 2014, CHAP. 338

AN ACT ESTABLISHING AN HISTORIC DISTRICT COMMISSION FOR THE TOWN OF NANTUCKET AND ESTABLISHING NANTUCKET ISLAND AS THE HISTORIC DISTRICT

Be it enacted, etc., as follows:

SECTION 1. Chapter 601 of the Acts of 1955 is hereby repealed and the Historic Districts Commission is hereby abolished.

SECTION 2. The purpose of this Act is to promote the general welfare of the inhabitants of the Town of Nantucket through the preservation and protection of historic buildings, places and districts of historic interest through the development of an appropriate setting for these buildings, places and districts and through the benefits resulting to the economy of Nantucket in developing and maintaining its vacation-travel industry through the promotion of these historic associations.

SECTION 2A. For purposes of this Act, the following words shall have the following meanings:

"Altered" shall include the words rebuilt, reconstructed, rehabilitated, remodeled, renovated and restored.

"Building," a combination of materials forming a shelter for persons, animals or property.

"Commission," the Nantucket Historic District Commission, acting as the Historic District Commission.

"Constructed" shall include the words built, erected, installed, enlarged, and moved.

"Exterior architectural features," such portions of the exterior of a building or structure, including the size and shape of proposed buildings and structures described in subsection (b) of section 9, as are open to view from a beach, a public way, a traveled way, a street or way shown on a land court plan or shown on a plan recorded in the Registry of Deeds, a proprietor's road, a street or way shown on a plan approved and endorsed in accordance with the Subdivision Control Law, a public park or a public body of water, and shall include but not be limited to, the architectural style and general arrangement and setting thereof; the kind, color and texture of exterior building materials; the color of paint or other materials applied to windows, doors, lights, signs, trim, gutters, leaders, louvers, vents, exterior surfaces and type and style of roofs, porches, decks, staircases, steps, balconies, roof walks and other appurtenant exterior fixtures. **[Amended by St. 2000, Ch. 57]**

"Razed," includes the words destroyed, demolished and removed.

"Structure," a combination of materials other than a building, including, but not limited to a vending machine, sign, fence, wall, terrace, walk or driveway. **[Amended by St. 1998, Ch. 193]**

SECTION 3. There is hereby established in the Town of Nantucket an Historic District Commission consisting of five (5) unpaid members who shall be resident taxpayers of the Town of Nantucket, to be

appointed by the Selectmen. The Historic District Commission shall have the powers and authority and perform all the duties as hereinafter enumerated and provided. All 5 members shall be elected for rotating 3-year terms at the annual town election each year. Vacancies occurring in the Commission, other than by expiration of term of office, shall be filled by appointment by the Selectmen, but such appointment shall be only for the unexpired portion of the term of the member replaced. **[Amended by St. 2014, Ch. 338; St. 2016, Ch. 2^[1]]**

The Chairman of the Historic District Commission may designate an associate member to sit on the Commission in case of absence, inability to act or conflict of interest on the part of any member thereof or in the event of a vacancy on the Commission until said vacancy is filled in the manner provided herein. Three such associate members shall be appointed by the board of selectmen in accordance with section 3.4(a)(3) of the charter of the town of Nantucket for rotating 3-year terms. Vacancies in said office shall be filled by the board of selectmen for the remainder of the unexpired term. **[Amended by St. 2014, Ch. 338]**

The members of the commission shall be exempt from subsections (a) and (c) of section 17 of chapter 268A of the General Laws. **[Amended by St. 1998, Ch. 193; St. 2002, Ch. 90]**

SECTION 4. There is hereby established in the Town of Nantucket an Historic Nantucket District, which shall include the land and waters comprising the Town of Nantucket.

SECTION 5. (a) No building or structure shall be constructed or altered within the Nantucket Historic District in any way that affects its exterior architectural features unless and until either:

(1) An application for a building permit shall first have been approved as to exterior architectural features, which approval shall be evidenced by a certificate of appropriateness issued by the Commission; or

(2) The Commission first issues a certificate of nonapplicability with respect to such alteration or construction,

(b) No building permit for construction or alteration of a building or structure within the Historic Nantucket District shall be issued by the Building Inspector until and unless the applicant has first obtained the applicable certificate from the Commission. No occupancy permit shall be issued by the Building Inspector with respect to any building or structure in the Nantucket Historic District unless and until the Building Inspector receives a written certification from the Historic District Commission that:

(1) The building or structure has been constructed or altered in compliance with the terms of the certificate of appropriateness issued therefor; or

(2) A certificate of nonapplicability has been issued for the construction or alteration.

(c) Nothing in this Act shall be construed to prevent the ordinary maintenance, repair or replacement of any exterior architectural feature within the Nantucket Historic District which does not involve a change in design, material, color or the outward appearance thereof; nor to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition, nor to prevent landscaping with plants, trees and shrubs.

SECTION 6. No building or structure within the Historic Nantucket District shall be razed without first obtaining a permit approved by the Historic District Commission, and said Commission shall be empowered 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 7. The erection or display of an occupational or other sign exceeding two (2) feet in length and six (6) inches in width or the erection or display of more than one (1) such sign, irrespective of size, on any lot, building or structure located within the Historic Nantucket District must be approved in advance by the Historic District Commission. Evidence of such approval shall be a certificate of appropriateness issued by said Commission.

SECTION 8. The Historic District Commission shall elect its Chairman and Vice Chairman. The Commission shall meet within ten (10) days of the receipt of an application for a certificate of appropriateness or permit for removal and at such other times as the Commission may determine or upon call of the Chairman or of any two (2) members. It shall keep a permanent record of its

resolutions, transactions and determinations and may make such rules and regulations consistent with this Act as may appear desirable and necessary. It may hold public or private hearings as it may deem advisable. It may incur expenses necessary to the carrying on of its work within the amount of its annual appropriation. The Commission shall make and publish rules and regulations adopting or establishing guidelines for exterior architectural features and establishing procedures for the processing of applications and conduct of hearings. The Commission may establish such fees with respect to applications and hearings as it deems necessary and appropriate to defray its expenses. **[Amended by St. 2010, Ch. 8]**

SECTION 9. (a) It shall be the function and the duty of the Historic District Commission to pass upon the appropriateness of exterior architectural features of buildings and structures hereafter to be erected, reconstructed, altered or restored within the Historic Nantucket District wherever such exterior features are subject to view from a beach, public way, public park, public body of water, traveled way, a street or way shown on a land court plan, or shown on a plan recorded in the registry of deeds, a proprietors road or a street or way shown on a plan approved and endorsed in accordance with the Subdivision Control Law. All plans, elevations and other information deemed necessary by the Commission to determine the appropriateness of the exterior features to be passed upon shall be made available to the Commission by the applicant. It shall also be the duty of the Commission to pass the removal of any building within said districts as set forth in Section 6 and the erection or display of occupational or other signs as set forth under Section 7.

(b) The Historic District Commission, in passing upon appropriateness of exterior architectural features in any case, shall keep in mind the purposes set forth in Section 2 and shall consider, among other things, the general design, arrangement, texture, material and color of the building or structure in question, the location on the lot and the relation of such factors to similar features of buildings and structures in the immediate surroundings and the position of such building or structure in relation to the street or public way and to other buildings and structures. In the case of new construction or additions to existing buildings or structures, the Historic District Commission shall consider the appropriateness of the size and shape of the building or structures both in relation to the land area upon which the building or structure is situated and buildings and structures in the vicinity, and the commission may in appropriate cases impose dimensional and setback requirements in addition to those required by applicable by-law. **[Amended by St. 2000, Ch. 57]**

(c) The Historic District Commission shall not consider interior arrangement or building features not subject to public view. The commission shall not make any recommendations or requirements except for the purpose of preventing developments incongruous to the historic aspects of the surroundings and the Historic Nantucket District. **[Amended by St. 2000, Ch. 57]**

(d) In case of disapproval, the Commission shall state its reasons therefor in writing, and it may make recommendations to the applicant with respect to appropriateness of design, arrangement, texture, material, color and the like of the building or structure involved.

(e) Upon approval of the plans, the Commission shall cause a certificate of appropriateness, dated and signed by the Chairman, to be issued to the applicant or affixed to the plans.

(f) If the Commission shall fail to take final action in any case within sixty (60) days after receipt of any application for a certificate of appropriateness or a permit for removal, the case shall be deemed to be approved except where mutual agreement has been reached for an extension of the time limits.

(g) The Commission shall have, in addition to the powers, authority and duties granted it by this Act, such other ancillary, enforcement or investigative powers, authority and duties as may be delegated or assigned to it from time to time by vote of an Annual or Special Town Meeting of the Town of Nantucket.

SECTION 10. Any person who violates any of the provisions of this Act shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$10 nor more than \$500, which shall be forfeited to the use of the town. Each day that a violation continues to exist shall constitute a separate offense.

(a) It shall be a violation of this Act for any person to construct or alter a building or structure without having first obtained from the Commission a certificate of applicability or a certificate of nonapplicability; for any person to raze any building or structure without having first obtained from the

Commission a permit for such razing; for any person to construct or alter a building or structure in any way which is inconsistent with or contrary to the terms of the certificate of approval issued for such building or structure; or for any person to knowingly submit false, fraudulent or misleading information to the Commission in connection with any application.

SECTION 10A. It shall be a violation of this Act for any person to construct or alter a building or structure without having first obtained from the Commission a certificate of applicability or a certificate of nonapplicability; for any person to raze any building or structure without having first obtained from the Commission a permit for such razing; for any person to construct or alter a building or structure in any way which is inconsistent with or contrary to the terms of the certificate of approval issued for such building or structure; or for any person to knowingly submit false, fraudulent or misleading information to the Commission in connection with any application.

SECTION 11. Appeals may be taken to the Board of Selectmen by any person aggrieved by the ruling of the Historic District Commission. The Board of Selectmen shall hear and act upon such appeals promptly, and the decision of the Board shall be as determined by a majority vote of the members of the Board. Such appeals shall be taken within ten (10) days of the filing by the Commission of its certificate of determination with the Clerk of the Town of Nantucket, and written notice of such appeal shall be given by the appealing party to the Commission at the time such appeal is taken.

SECTION 12. Any person or the Historic District Commission, aggrieved by a decision of the Board of Selectmen, may appeal to the Superior Court sitting in equity for the County of Nantucket, provided that such appeal is filed in said Court within 15 days after such decision is recorded. The appealing party or parties shall, at the time of filing such appeal, give notice thereof to all persons who were parties to the appeal to the Board of Selectmen, by causing to be delivered to such parties a copy of the complaint and written notice of the filing thereof. The Court shall hear all pertinent evidence and determine the facts and, upon the facts so determined, annul such decision if found to exceed the authority of such Board, or may remand the case for further action by the Commission or make such other decree as justice and equity may require. The foregoing remedy shall be exclusive, but the parties shall have all rights of appeal and exception as in other equity cases.

Costs shall not be allowed against the Historic District Commission or the Board of Selectmen unless it shall appear to the Court that the Commission or the Board, in making the decision appealed from, acted with gross negligence, in bad faith or with malice.

Costs shall not be allowed against the party appealing from the decision of the Historic District Commission or the Board of Selectmen unless it shall appear to the Court that said appellant or appellants acted in bad faith or with malice in making the appeal to the Court.

SECTION 13. The Superior Court, sitting in equity for Nantucket County, shall have jurisdiction to enforce the provisions of this Act and the certificates, permits, determinations, rulings and regulations issued pursuant thereto and may, upon petition of the Commission, restrain by injunction violations thereof; and, without limitation, such court may order the removal of any building, structure or exterior architectural feature constructed in violation of this Act or the substantial restoration of any building, structure or exterior architectural feature altered or razed in violation of this Act and may issue such other orders for relief as may be equitable.

SECTION 14. In case any section, paragraph or part of this Act be for any reason declared invalid or held unconstitutional by any court of last resort, every other section, paragraph or part shall continue in full force and effect.

SECTION 15. This Act shall take effect upon its acceptance by the voters of the Town of Nantucket at an Annual Town Meeting or any meeting duly called for the purpose.

February 27, 1990

[1] *Editor's Note: Section 2 of this enactment provided that "an incumbent member of the Historic District Commission appointed or elected pursuant to section 3 of chapter 395 of the acts of 1970, as amended, shall continue to serve in that capacity until the expiration of the incumbent's term or until the incumbent sooner vacates the office, after which the election of members shall proceed in accordance with section 1."*

(b) the psychologist is listed in the National Register of Health Service Providers in Psychology;

(c) the psychologist has the equivalent of two years of full time experience, one of which was post doctoral, at a site where health care services are provided;

(d) the psychologist submits the affidavits of two psychologists licensed in the commonwealth which attest that the applicant has been engaged for the equivalent of at least two years full time in the provision of health services; or

(e) any other conditions that the board of registration of psychologists may deem acceptable.

SECTION 6. Notwithstanding the provisions of section one hundred and nineteen and section one hundred and twenty-one of chapter one hundred and twelve of the General Laws, if application is made before July first, nineteen hundred and ninety-four to the board of registration of psychologists by an applicant who has completed two full academic years of a graduate program on July first, nineteen hundred and eighty-eight, which he subsequently completes, leading to a doctoral degree in a closely related field with a major emphasis in psychology, as defined by the rules and regulations of the board, said applicant shall not be required to meet the requirements of subsection (b) of said section one hundred and nineteen of said chapter one hundred and twelve.

Approved January 13, 1988.

Chapter 735. AN ACT RELATIVE TO THE NANTUCKET HISTORIC DISTRICT COMMISSION.

Be it enacted, etc., as follows:

SECTION 1. Chapter 395 of the acts of 1970 is hereby amended by inserting after section 2 the following section:-

Section 2A. For purposes of this act the following words shall have the following meanings:-

"Altered", shall include the words rebuilt, reconstructed, rehabilitated, remodeled, renovated, and restored.

"Building", a combination of materials forming a shelter for persons, animals or property.

"Commission", the Nantucket Historic District Commission acting as the Historic District Commission.

"Constructed", shall include the words built, erected, installed, enlarged, and moved.

"Exterior architectural features", such portions of the exterior of a building or structure as are open to view from a beach, a public way, a traveled way, a street or way shown on a land court plan or shown on a plan recorded in the registry of deeds, a proprietor's road, a street or way shown on a plan approved and endorsed in accordance with the

subdivision control law, a public park, or a public body of water, and shall include, but not be limited to, the architectural style and general arrangement and setting thereof; the kind, color, and texture of exterior building materials; the color or paint or other materials applied to windows, doors, lights, signs, trim, gutters, leaders, louvers, vents, porches, decks, staircases, steps, balconies, roof walks, and other appurtenant exterior fixtures.

"Razed", shall include the words destroyed, demolished and removed.

"Structure", a combination of materials other than a building, including, but not limited to, a sign, fence, wall, terrace, walk or driveway.

SECTION 2. Said chapter 395 is hereby further amended by striking out section 5, as amended by section 1 of chapter 300 of the acts of 1984, and inserting in place thereof the following section:-

Section 5. (a) No building or structure shall be constructed or altered within the Nantucket Historic District in any way that affects its exterior architectural features unless and until either:

(1) an application for a building permit shall first have been approved as to exterior architectural features, which approval shall be evidenced by a certificate of appropriateness issued by the commission; or

(2) the commission first issues a certificate of nonapplicability with respect to such alteration or construction.

(b) No building permit for construction or alteration of a building or structure within the Historic Nantucket District shall be issued by the building inspector until and unless the applicant has first obtained the applicable certificate from the commission. No occupancy permit shall be issued by the building inspector with respect to any building or structure in the Nantucket Historic District unless and until the building inspector receives a written certification from the Historic District Commission that (1) the building or structure has been constructed or altered in compliance with the terms of the certificate of appropriateness issued therefor or (2) a certificate of nonapplicability has been issued for the construction or alteration.

(c) Nothing in this act shall be construed to prevent the ordinary maintenance, repair, or replacement of any exterior architectural feature within the Nantucket Historic District which does not involve a change in design, material, color, or the outward appearance thereof; nor to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition.

SECTION 3. Section 8 of said chapter 395 is hereby amended by adding the following two sentences:- The commission shall make and publish rules and regulations adopting or establishing guidelines for exterior architectural features and establishing procedures for the processing of applications and conduct of hearings. The commission may establish such fees with respect to applications and hearings as it deems necessary and appropriate to defray its expenses.

SECTION 4. Subsection (a) of section 9 of said chapter 395, as amended by section 2 of chapter 300 of the acts of 1984, is hereby further amended by inserting after the word "a", in line 6, the first time it appears, the words:- beach, public way, public park, public body of water.

SECTION 5. Said section 9 of said chapter 395 is hereby further amended by striking out subsection (c) and inserting in place thereof the following subsection:-

(c) The Historic District Commission shall not consider relative size of buildings in plan, interior arrangement or building features not subject to public view. The commission shall not make any recommendations or requirements except for the purpose of preventing developments incongruous to the historic aspects of the surroundings and the Historic Nantucket District.

SECTION 6. Said section 9 of said chapter 395 is hereby further amended by striking out subsection (g), added by chapter 708 of the acts of 1972, and inserting in place thereof the following subsection:-

(g) The commission shall have, in addition to the powers, authority, and duties granted it by this act, such other ancillary, enforcement, or investigative powers, authority, and duties as may be delegated or assigned to it from time to time by vote of an annual or special town meeting of the town of Nantucket.

SECTION 7. Said chapter 395 is hereby further amended by inserting after section 10 the following section:-

Section 10A. It shall be a violation of this act for any person to construct or alter a building or structure without having first obtained from the commission a certificate of applicability or a certificate of nonapplicability; for any person to raze any building or structure without having first obtained from the commission a permit for such razing; for any person to construct or alter a building or structure in any way which is inconsistent with or contrary to the terms of the certificate of approval issued for such building or structure; or for any person to knowingly submit false, fraudulent, or misleading information to the commission in connection with any application.

SECTION 8. Section 11 of said chapter 395 is hereby amended by adding the following sentence:- Such appeals shall be taken within ten days of the filing by the commission of its certificate of determination with the clerk of the town of Nantucket and written notice of such appeal shall be given by the appealing party to the commission at the time such appeal is taken.

SECTION 9. Section 12 of said chapter 395 is hereby amended by striking out the second sentence and inserting in place thereof the following two sentences:- The appealing party or parties shall, at the time of filing such appeal, give notice thereof to all persons who were

parties to the appeal to the board of selectmen, by causing to be delivered to such parties a copy of the complaint and written notice of the filing thereof. The court shall hear all pertinent evidence and determine the facts and, upon the facts so determined, annul such decision if found to exceed the authority of such board, or may remand the case for further action by the commission, or make such other decree as justice and equity may require.

SECTION 10. Said chapter 395 is hereby further amended by striking out section 13 and inserting in place thereof the following section:-

Section 13. The superior court sitting in equity for Nantucket county shall have jurisdiction to enforce the provisions of this act, and the certificates, permits, determinations, rulings, and regulations issued pursuant thereto, and may, upon petition of the commission, restrain by injunction violations thereof; and, without limitation, such court may order the removal of any building, structure, or exterior architectural feature altered or razed in violation of this act, and may issue such other orders for relief as may be equitable.

Approved January 13, 1988.

Chapter 736. AN ACT RELATIVE TO THE ALLEVIATION OF TRAFFIC CONGESTION.

Be it enacted, etc., as follows:

Chapter 63 of the General Laws, as appearing in the 1986 Official Edition, is hereby amended by inserting after section 31C the following three sections:-

Section 31D. As used in sections thirty-one D to thirty-one F, inclusive, the following words shall, unless the context requires otherwise, have the following meanings:-

"Commuting student", a full-time student at a college, university or other postsecondary educational institution, who travels between his residence and an educational institution on a regular basis.

"Company shuttle van", a highway vehicle which meets all of the following criteria:

- (1) has a seating capacity of at least seven adults, including the driver;
- (2) at least eighty per cent of the mileage of which reasonably can be expected to be for the purpose of transporting taxpayer's employees between their residence, or public transportation facilities that interface with such routes and their place of employment within the commonwealth, provided, however, that the number of employees transported on such trips is at least one half of the adult seating capacity of such vehicle, not including the driver.

"Employee", either of the following:

- (1) an individual who performs service for an employer for more than eight hours per week for remuneration, or

Chapter 124. Signs; Satellite Dishes; Rooflines

Article IV. Certificates of Appropriateness, Etc.

[Adopted 4-13-1998 ATM by Art. 49, approved 7-31-1998]

§ 124-8. Construction conditioned on approval.

Pursuant to Section 9(g) of the Nantucket Historic District Act (Chapter 395, Acts of 1970, as amended, hereinafter referred to as the "HDC Act"), no building or structure shall be constructed or altered within the Nantucket Historic District as defined in Section 4 of the HDC Act in any way that affects its exterior architectural features, unless and until either:

- A. An application for a building permit shall first have been approved as to exterior architectural features, which approval shall be evidenced by a certificate of appropriateness issued by the Nantucket Historic District Commission; or
- B. The Commission first issues a certificate of nonapplicability with respect to such alteration or construction.

§ 124-9. Permit for razing required.

Pursuant to Section 9(g) of the HDC Act, no building or structure within the Historic Nantucket District shall be razed without first obtaining a permit approved by the Nantucket Historic District Commission.

§ 124-10. Applicability of Act.

For the purposes of this Article IV, "exterior architectural features" shall have the same meaning as defined in Section 2A of the HDC Act. The "Nantucket Historic District Commission" refers to the Commission created by Section 3 of said Act. The procedures for obtaining a certificate of appropriateness, a certificate of nonapplicability or a permit to raze are those described in the HDC Act, including Section 9 thereof.

§ 124-11. Violations and penalties.

Any violation of § 124-8 or 124-9 prohibitions shall result in a penalty of \$300, which may be enforced by means of noncriminal disposition tickets pursuant to Chapter 1 of the Nantucket Code. Each day the violation continues to exist shall be considered a separate violation.

§ 124-12. Notice.

[Added 4-13-1998 ATM by Art. 60, approved 7-31-1998; amended 4-12-1999 ATM by Art. 58, approved 8-10-1999; 4-8-2008 ATM by Art. 70, approved 8-18-2008]

The Historic District Commission (HDC) shall establish regulations to provide for the giving of notice to interested parties of hearings on all applications that involve new construction resulting in an overall change of 1,000 square feet or more of floor area, or 100 square feet or more of floor area in the Old Historic Districts of Town and Siasconset, as may from time to time be defined by the HDC. Such regulations shall include a provision that notice shall be given to owners of all adjoining property and other property deemed by the Commission to be materially affected thereby as they appear on the most recent real estate tax list of the Board of Assessors, and to such other interests as the Commission shall deem entitled to notice by adoption of rules and regulations. The Commission shall give notice of hearings in accordance with its regulations.

§ 124-13. Minimum maintenance of buildings and structures to which St. 1970, c. 395 applies.

[Added 4-12-2004 ATM by Art. 55, approved 9-3-2004]

- A. Owners of certain contributing buildings and structures in the Nantucket Historic District shall provide sufficient minimum maintenance as defined herein in Subsection **B** below, to the minimum extent necessary to keep such buildings from falling into a state of poor repair as may be identified hereinafter by the Nantucket Historic District Commission rules and regulations as contributing buildings and structures to the historic authenticity of the Nantucket Historic District. This provision shall only apply to the exterior architectural features of such contributing buildings and structures, as defined in St. 1970, c. 395, § 2A,^[1] as amended, and also to the interior portions of buildings and structures which, if not adequately maintained, would cause the exterior architectural features to deteriorate or become damaged.

[1] *Editor's Note: See Ch. A301, § A301-4, Historic District Commission.*

- B. In carrying out the responsibilities set forth in § **124-13A** above, owners shall therefore be responsible for taking at least the minimum steps necessary to prevent the deterioration of the following items, which would, if allowed to deteriorate, cause a detrimental effect upon the character of the Historic District as to such contributing buildings and structures as follows:
- (1) Foundations, exterior walls or other vertical supports (exterior or interior);
 - (2) Roofs or other horizontal members (including joists, beams, etc.);
 - (3) Chimneys or chimney support systems.
- C. In cases where deterioration has already progressed to an advanced stage, and where immediate removal is requested by the owner, the standard for razing in St. 1970, c. 395, § 6 shall apply.
- D. In all cases for such contributing buildings and structures, nonstructural exterior architectural features shall be repaired. In situations where it is impractical to repair the feature, or prohibitively expensive to replace it, it shall be stored safely until such time as it is possible to recreate the feature from the original pieces at reasonable expense.
- E. The Nantucket Historic District Commission upon application and after hearing, may grant a waiver from the requirements of this section upon a showing of impossibility, or financial hardship, or the occurrence of events beyond the owner's control, or such other exigent circumstances as the Commission may determine.
- F. Any person violating this section shall be subject to a fine or penalty in the amount of \$300, with each day to be considered as a separate violation. The enforcing person for purposes of Nantucket Code § 1-2 shall be the administrator of the Historic District Commission or his/her designee.