

From: [Megan Trudel](#)
To: [William Saad](#)
Subject: FW: STR Similar questions
Date: Tuesday, October 7, 2025 12:52:13 PM
Attachments: [image001.png](#)

For the packet

Megan Trudel, AICP

Deputy Director of Planning
Town of Nantucket
2 Fairgrounds Rd, Nantucket MA 02554



From: John W. Giorgio <JGiorgio@k-plaw.com>
Sent: Tuesday, September 30, 2025 11:30 AM
To: Libby Gibson <LGibson@nantucket-ma.gov>
Cc: Lauren F. Goldberg <lgoldberg@k-plaw.com>; Amy E. Kwesell <AKwesell@k-plaw.com>; George X. Pucci <GPucci@k-plaw.com>; Leslie Snell <LSnell@nantucket-ma.gov>; Megan Trudel <mtrudel@nantucket-ma.gov>; 'Sarah F. Alger' <sfa@sfapc.com>
Subject: RE: STR Similar questions

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Libby;

You have asked me to provide a legal opinion on the questions raised by Select Board Member Fee whether Article 1 of the November 4, 2025, Special Town Meeting (Article 1) is subject to the two-year bar from consideration as a repetitive zoning petition.

Procedural Question

If a voter challenges the ability of Town Meeting to consider this article based on a claim that it is a repetitive zoning petition, it will, in the first instance, be up to the Moderator to determine whether debate and a vote may proceed on the article. If the Moderator determines that it is a repetitive zoning petition, she may refuse to allow a motion to be placed on the floor. Assuming, however, that the Moderator allows Article 1 to move forward, and the article passes, any person may submit a challenge

to the Attorney General during the statutory review and approval process that will occur after the town meeting.

Two- Year Statutory Bar

The question whether the article constitutes a repetitive zoning petition is governed by the standards set forth in G.L. c. 40A, §5, which provides:

No proposed zoning ordinance or by-law which has been unfavorably acted upon by a city council or town meeting shall be considered by the city council or town meeting within two years after the date of such unfavorable action unless the adoption of such proposed ordinance or by-law is recommended in the final report of the planning board.

Short Answer

In my opinion, the pending citizen warrant article under Article 1 does not constitute a repetitive zoning petition for two reasons and I have so informed the Moderator of my opinion. The reasons for this opinion are (1) the Planning Board recommended favorable action on Article 66 of the May 2025 Annual Town Meeting; and (2) Article 1, although similar in many respects to Article 66, is of a different character than what was proposed in Article 66.

Comparison of Articles 66 and 1

Article 66 was submitted as a citizen warrant article for the 2025 Annual Town Meeting. It proposed to amend the Zoning Bylaw by adding a definition to the bylaw entitled "Short-Term Nantucket Vacation Rental (NVR)" and proposed to amend the Use Chart by adding NVR and designating a "Y" in all zoning districts except for the CI District. The Y Designation required NVR to comply with the requirements of the Town's STR General Bylaw (c. 123 of the Town Code). Although the Planning Board made a favorable recommendation, Article 66 failed to achieve the necessary 2/3rds vote for passage.

In June 2025, the Land Court (VHAY, J.) issued a ruling finding that an STR located in a residential district in the Town did not meet the definition of either a Principal Use or an Accessory Use and was, therefore, prohibited. The Land Court also raised the question whether any rental use is allowed on Nantucket in light of a 2015 zoning amendment to the ZBL that eliminated rental use from the zoning bylaw.

Article 1 contains a preamble stating that the intent of the proposed amendment to the zoning bylaw is to restore the pre 2015 bylaw by amending the definition of principal use to include leasing of residential property including both long-term and short-term rentals. The bylaw also includes a new definition for Short-Term Rental, which is substantially similar to the Article 66 definition of NVR, and a definition of Long-Term Rental. The new proposal also adds Short-Term Rentals to the Use Chart with a "Y" designation in all districts except the CI. The Planning Board has advertised the public hearing for the new proposal and will, presumably, be making a report and

recommendation on Article 1.

Following is a synopsis of the state of the law on repetitive zoning petitions:

In a 2019 decision, the Massachusetts Appeals Court considered a challenge to the Barnstable City Council's adoption of a revised version of a proposed zoning amendment approximately four months after a vote to adopt the original version failed to carry by the necessary two-thirds majority. Penn v. Town of Barnstable, 88 Mass. App. Ct. 205 (2019). The original proposal had sought an amendment to authorize commercial parking lots on certain nonconforming lots. The revised version expanded upon the original by adding further restrictions, procedural requirements, and site development standards. In Penn, the Appeals Court cites to an earlier decision by the Massachusetts Supreme Judicial Court, Kitty v. Springfield, 343 Mass. 321 (1961), in explaining that the purpose of the two-year bar is to give some measure of finality to unfavorable legislative action on a zoning amendment so that "members of the public shall be able to ascertain the legislative status of a proposed change at all times, and to rely on unfavorable action ... as a complete defeat of the proposal." *Id.* at 210. The Appeals Court went on to note that, while the Court in Kitty had construed the two-year bar as applying to "any new action of the same character", there are no reported decisions addressing the question of what it means to be "of the same character." Therefore, the Appeals Court looked to cases construing analogous statutory time bars for repetitive actions and concluded that proposed ordinances or bylaws are the same for purposes of G.L. c. 40A, § 5, sixth par. "if they share the same fundamental or essential character, with little substantive differences."

Application of Statutory Bar to Article 1 :

Of particular note, the Planning Board recommendation on Article 66 was favorable action. As noted above, in the Penn case, Judge Vhay (who is the same judge presiding in the legal challenge to STR's in Ward v. Town of Nantucket) found that in conducting a repetitive zoning petition inquiry the relevant recommendation of the Planning Board is the first one. Applying that legal principle to the current petition, because the Nantucket Planning Board recommended favorable action on Article 66, the two-year bar does not apply to Article 1. I would also note that the Attorney General takes a somewhat different view. In recently passing on a number of zoning amendments under the so-called MBTA zoning requirements, the Attorney General has taken the position that as long as a Planning Board has recommended favorable action on either the first or the second zoning proposal, town meeting may vote on the second proposal. Regardless of whether one applies Judge Vhay's interpretation or the Attorney General's or the Planning Board recommendation under Article 1, Article 1 may be considered because the Planning Board recommended favorable action on Article 66.

Analysis of Whether Articles 66 and 1 Are of the Same Fundamental or Essential Character

Since this issue has never been directly addressed by an appellate court, it is prudent to review Article 1 on the question whether it shares the same fundamental or essential character, with little substantive differences as Article 66. In my opinion, the answer to that question is no for the following reason:

There has been a significant intervening event between the 2025 Annual Town Meeting and the November 1, Special Town Meeting; i.e., a decision from the Land Court that has, arguably, called into question the ability of homeowners to enter into long-term leases under the current zoning bylaw. The preamble to Article 1 makes clear that it is intended to remove any ambiguity by expressly permitting both long-term and short-term rental of residential dwelling units. Article 1 arguably accomplishes this by adding significant additional language to the definition of Principal Uses in the zoning bylaw, an addition that was not included in Article 66. By expressly allowing both long-term and short-term rentals in the definition of principal uses, Article 1, in my opinion, does not share the same fundamental or essential character as Article 66. Undoubtedly, if Article 1 is approved, the zoning bylaw will be amended in ways that were not contemplated by Town Meeting when Article 66 was considered.

Please let me know if you have any questions.

John

John W. Giorgio, Esq.

KP | LAW

101 Arch Street, 12th Floor

Boston, MA 02110

617-654-1705

JGiorgio@k-plaw.com

www.k-plaw.com

This message and the documents attached to it, if any, are intended only for the use of the addressee and may contain information that is PRIVILEGED and CONFIDENTIAL and/or may contain ATTORNEY WORK PRODUCT. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please delete all electronic copies of this message and attachments thereto, if any, and destroy any hard copies you may have created and notify me immediately.

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

From: Libby Gibson <LGibson@nantucket-ma.gov>

Sent: Thursday, September 25, 2025 12:32 PM

To: John W. Giorgio <JGiorgio@k-plaw.com>

Subject: FW: STR Similar questions

Can you pls answer these....

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

This electronic message and any attached files contain information from the Town of Nantucket that may be privileged and/or confidential. The information is intended for the recipient named above, and use by any other person is not authorized. If you are not the intended recipient, any disclosure, distribution, copying, or use of this information is strictly prohibited. If you have received this message in error, please notify the sender by e-mail immediately. Also, please be advised that the Secretary of State's office has determined that most e-mails sent to and from municipal officials are considered to be public records and consequently may be subject to public disclosure.

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

From: Matt Fee <matt@somethingnatural.com>

Sent: Thursday, September 25, 2025 10:58 AM

To: Libby Gibson <LGibson@nantucket-ma.gov>

Cc: Erika Mooney <EMooney@nantucket-ma.gov>

Subject: STR Similar questions

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Sorry if this has been asked and answered. Searched in my emails and couldn't find it.

I'm hearing rumblings that the Balzer Borgeson article is substantially similar to previous full codification efforts and individuals are considering challenging it.

Is it substantially similar? Has town counsel or town moderator ruled in writing yet?

How, when would they do that?

If someone did challenge, does it make a difference whether they challenge before or after a town meeting vote?

If the B/B article passes STM and is challenged would this pause implementation? If so how long?

If challenge is upheld and it ends up in court how long might everyone remain in STR "limbo"?

Thanks

Matt