COASTAL RESILIENCE ADVISORY COMMITTEE **PROCLAMATION**

September 2024 is Climate Change Awareness Month for Nantucket

- Whereas the Town of Nantucket recognizes that climate change and rising sea levels pose a significant and increasing threat to Nantucket as outlined in various state and f ederal scenarios; and
- Whereas the Select Board formed the Coastal Resilience Advisory Committee in part toa ssist with obtaining community feedback on climate change and sea level rise; and
- Whereas in 2022 the Select Board endorsed the first Nantucket Coastal Resilience Plan; and
- Whereas the Town of Nantucket, through a Municipal Vulnerability Preparedness Grant, developed a Resilient Nantucket toolkit for adapting historic resources for sea level rise; and
- Whereas the Select Board adopted local sea level rise scenarios (NOAA's high scenario) and best available flood hazard data (Massachusetts's Coastal Flood Risk Model); and
- Whereas ACKlimate Nantucket provides a platform for the public-private partnership between the community, organizations, and Town of Nantucket on issues of resilience and sustainability; and
- Whereas ACKlimate partner organizations are hosting a series of educational events in September 2024 featuring climate change topics that may be found online at: https://www.acklimate.org/ackevents; and

Now jointly, the Coastal Resilience Advisory Committee and ACKlimate call upon the Select Boa rd to proclaim September 2024 "Climate Change Awareness Month" for the Town of Nantucket.

"We, the Select Board of the Town of Nantucket in the Commonwealth of Massachusetts, do he reby officially proclaim the month of September, 2024, is 'Climate Change Awareness Month' and do hereby encourage all residents to learn more about the threats of climate change and se a level rise and the planning efforts underway to increase community resilience."

Signed, this ____ day of September 2024.

_____

_ Brooke Mohr Chair, Select Board

Town of Nantucket, Massachusetts

The Coastal Resilience Advisory Committee meets on the second and fourth Tuesday of the month at 10:00 am via Zoom. The meeting link and agenda are posted in advance and available through: https://www.nantucket-ma.gov/1391/Coastal-Resilience-Advisory-Committee

For more information, email Leah Hill, Town of Nantucket Coastal Resilience Coordinator, at: lhill@nantucket-ma.gov

ACKlimate Nantucket's mission is to support innovation and adaptation for the Nantucket community, and share the Nantucket model to help other historic coastal communities in the hopes of creating a more resilient future for all. For a schedule of Climate Change Awareness Month events, go to https://www.acklimate.org/ackevents

For other information, email coordinator@acklimate.org

Chapter 139

ZONING

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[HISTORY: Adopted by the Special Town Meeting of the Town of Nantucket 11-13-1990 by Art. 12, AG approval 3-19-1991.[1] Amendments noted where applicable.]

GENERAL REFERENCES

Noise — See Ch. 101.

Parking regulations — See Ch. 103.

Wetlands regulations — See Ch. 136.

1. **Editor's Note: This bylaw replaced, in its entirety, the Zoning Bylaw appearing as Ch. 139, Zoning, adopted 3-13-1972 ATM by Art. 12, effective 7-27-1972, as amended through 4-6-1987 ATM, Art. 14. This bylaw further provided that this Ch. 139 shall be cited as the "Zoning Bylaw."**

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ARTICLE I
Purpose; Definitions

§ 139-1. Purpose.

To promote the health, safety, convenience, morals and general welfare of its inhabitants, to lessen the danger from fire and congestion and to improve the Town under the provisions of the State Zoning Act, MGL c. 40A, the use, construction, repair, alteration and height of buildings and structures and the use of land and the size and shape of lots in the Town of Nantucket are hereby restricted and regulated as hereinafter provided.

§ 139-2. Definitions and word usage.

A. Definitions. In this Zoning Bylaw, Chapter 139 of the Nantucket Code, the following terms, unless a contrary meaning is required by the context or is specifically prescribed, shall have the following meanings:

ACCESSORY DWELLING — A dwelling unit located within an owner-occupied single-family building. The exterior architectural design and use of an accessory dwelling shall be harmonious with the appearance and use of the structure as the owner's home. The gross floor area of the accessory dwelling shall not be more than the gross floor area of the primary dwelling and not greater than 800 square feet. The accessory dwelling shall be self-contained with separate sleeping, cooking and sanitary facilities for the exclusive use of the occupant. The structure containing the primary dwelling and accessory dwelling shall be in single ownership, and one of the units shall be owner-occupied.**[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009; amended 4-6-2015 ATM by Art. 61, AG approval 8-5-2015; 5-2-2022 ATM by Art. 53, AG approval 10-31-2022]**

ACCESSORY USES — Separate structures, buildings or uses which are subordinate and customarily incidental to a principal structure, building or use located on the same lot.[2]**[Amended 4-6-2015 ATM by Art. 64, AG approval 8-5-2015]**

ADULT ON-SITE MARIJUANA SOCIAL CONSUMPTION OPERATOR — A marijuana retailer where consumers are permitted to consume marijuana and marijuana products on its premises**[Added 10-10-2018 STM by Art. 1, AG approval 8-6-2019]**

ADULT USES — All uses as described and defined in MGL c. 40A, § 9A, as may be amended from time to time to include: Any establishment which has 10% of its stock-in-trade on hand; whose sales, including rentals from such a portion of stock equals or exceeds 10% of monthly sales; or has 10% or greater floor area open to and observable by customers used for the display or storage of adult-oriented material, or as presentation time of live or recorded performances, shall be defined as an adult use. Adult uses are subject to the following standards:**[Added 4-10-2002 ATM by Art. 41, AG approval 7-31-2002; amended 4-6-2015 ATM by Art. 64, AG approval 8-5-2015; 4-2-2016 ATM by Art. 58, AG approval 7-12-2016]**

(1) Adult uses shall be located in stand-alone facilities and shall not be allowed within a building or structure containing other retail, commercial, residential, industrial or other uses.

(2) A minimum separation of 300 feet, measured between lot lines, is required between adult uses and state-certified public or private schools or state-licensed day-care centers.

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2. Editor's Note: The former definition of "affordable unit" which immediately followed this definition, was replaced by the definition of "inclusionary unit," which is included in its proper alphabetical sequence.

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AFFORDABLE HOUSING — Dwelling units restricted to occupancy by families with annual incomes less than 150% of the median annual household income for Nantucket County as determined by the most recent calculation of the U.S. Department of Housing and Urban Development.**[Added 4-12-1994 ATM by Art. 48, AG approval 4-29-1994; amended 4-8-2008 ATM by Art. 57, AG approval 8-18-2008; 4-6-2015 ATM by Art. 64, AG approval 8-5-2015]**

AGRICULTURE — The use of land for agricultural purposes, including farming, dairying, pasturage, apiculture, horticulture, floriculture, viticulture, and animal and poultry husbandry, and the necessary uses for packing, treating and storing the produce.

ALCOHOLIC BEVERAGE SALES — A facility for the retail sale of beer, wine, or other alcoholic beverages for off-premises consumption.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

ALTERATION — Any change in size, shape or use of a building or structure.

ANIMAL FEEDLOT — Land on which 25 or more livestock per acre are kept for the purpose of feeding.

ANIMAL HOSPITAL — A facility maintained by and for the use of a licensed veterinarian for the observation, care, and treatment of domestic animals. An animal hospital may include the kenneling of animals for medical services only.**[Added 5-6-2023 ATM by Art. 37, AG approval 9-8-2023]**

ANIMAL SHELTER — A facility used to house or contain stray, homeless, abandoned, or unwanted animals and that is owned, operated, or maintained by a nonprofit corporation for the purpose of providing temporary kenneling and finding permanent adoptive homes for animals. An animal shelter may, as an accessory use, provide kenneling services to the public and medical care to animals.**[Added 5-6-2023 ATM by Art. 37, AG approval 9-8-2023]**

APARTMENT — A dwelling unit located within a commercial structure or detached structures on the same lot with a commercial use. An apartment(s) shall not occupy more than 50% of the first floor area of the commercial structure(s). The Planning Board may by special permit waive this requirement based on a finding that the commercial character of the area will not be negatively impacted by the location of a dwelling unit on the first floor of the commercial structure. A maximum of four apartments are allowed by right in certain districts, subject to the dimensional requirements set forth below. The Planning Board may issue a special permit to allow more than four apartments on larger lots, provided that: (1) the overall number of units shall not exceed the density set forth in the schedule below; and (2) the applicant shall demonstrate through submission of a dimensioned lotting plan that the subject property could be divided into multiple lots pursuant to a conventional subdivision plan without requiring waivers from the Planning Board's Rules and Regulations Governing the Subdivision of Land (as in effect at the time of application):**[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009; amended 4-2-2013 ATM by Art. 30, AG approval 7-26-2013; 4-5-2014 ATM by Art. 66, AG approval 5-7-2014; 4-6-2015 ATM by Art. 64, AG approval 8-5-2015; 11-6-2017 STM by Art. 20, AG approval 2-26-2018; 6-5-2021ATM by Art. 47, AG approval 10-7-2021]**

(1) CDT — one dwelling unit is permitted for each 1,000 square feet of lot area.

(2) CMI — one dwelling unit is permitted for each 2,000 square feet of lot area.

(3) CN — one dwelling unit is permitted for each 3,000 square feet of lot area.

(4) CTEC — one dwelling unit is permitted for each 4,000 square feet of lot area.

(5) CI — one dwelling unit is permitted for each 5,000 square feet of lot area.

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The Planning Board may waive the lot area requirements as set forth in the schedule above through the issuance of a special permit, based on the finding that not more than one additional unit than would otherwise be allowed, not to exceed a total of four, may be constructed. **[Added 5-2-2022 ATM by Art. 58, AG approval 9-8-2022]**

APARTMENT BUILDING(S) — A structure or structures containing a maximum of up to eight bedrooms in up to six dwelling units on a single lot , or an equivalent density, through the issuance of a special permit granted by the Planning Board, for a project, comprised of one or more parcels of land in the same ownership or control, that could be divided into multiple lots on a conventional subdivision plan meeting all dimensional and upland requirements of the bylaw and consistent with the Rules and Regulations Governing the Subdivision of Land, as may be amended by the Planning Board from time to time, as demonstrated by the submission of a dimensioned lotting plan, with no commercial or other uses, shall be allowed in the following districts:**[Added 4-5-2014 ATM by Art. 68, AG approval 5-7-2014; amended 4-2-2016 ATM by Arts. 36, 60, AG approval 7-12-2016; 11-6-2017 STM by Art. 20, AG approval 2-26-2018]**

(1) CN/VN — one dwelling unit is permitted for each 2,500 square feet of lot area.

(2) CMI — One dwelling unit is permitted for each 1,250 square feet of lot area.

The Planning Board shall be the special permit granting authority.

AQUIFER — A geological formation that stores and transmits significant quantities of recoverable water.

ARCADE — A place or facility where any electric or electronic machine, such as pinball or other similar electronic games, is played for amusement only. Shall not be construed so as to include bingo games, juke boxes, children's mechanical rides (e.g., horses, rocket ships), or machines that sell merchandise nor shall it be construed so as to include gambling devices or any other devices prohibited by law.[3]**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

AUTOMOBILE SERVICE STATION — Any building, structure or land used primarily for the dispersal, sale, or offering for sale of automotive fuels, oils or accessories, including lubrication of automobiles and replacement or installation of minor parts and accessories, but not including major repair work, such as motor replacement or rebuilding, body and fender repair, or painting.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

AVERAGE MEAN GRADE — **[Added 4-12-1994 ATM by Art. 55, AG approval 4-29-1994]**

(1) Average mean grade shall be the average of the mean grades established along the median grade line. There shall be only one average mean grade for each continuous median grade line.

(2) Where a side does not have continuous existing and/or finish grade lines, caused by retaining walls or horizontal breaks created by setbacks or protrusions, the average mean grade shall be the average of separately calculated average mean grades for each separate continuous median grade line and shall be proportional to the horizontal length of each continuous median grade line.

BAKERY — An establishment primarily engaged in the retail sale of baked goods for off-site

3. **Editor's Note: The former definition of "assisted-independent-living community," added 4-10-2000 ATM by Art. 27, AG approval 8-2-2000, which immediately followed this definition, was repealed 9-21-2009 STM by Art. 16, AG approval 12-11-2009.**

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consumption. A bakery may include, as an accessory use, wholesale distribution of goods prepared on the site.[4] **[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009; amended 11-6-2017 STM by Art. 18, AG approval 2-26-2018]**

BUILDING — A structure forming a shelter for persons, animals or property and having a roof. Where the context allows, the word "building" shall be construed as though followed by the words "or part thereof."

BUILDING AND STRUCTURE HEIGHT — **[Added 4-12-1994 ATM by Art. 55, AG approval 4-29-1994; amended 4-12-1999 ATM by Art. 30, AG approval 8-10-1999; 4-2-2016 ATM by Art. 60, AG approval 7-12-2016]**

(1) The height of the building or structure shall be established for each side.

(2) There shall only be one highest point for each building or structure.

(3) No one building and/or structure side shall exceed 32 feet, except in the CDT and CMI Districts, or as otherwise permitted.

(4) Where a side does not have continuous existing and/or finish grade lines, the average mean grade shall be the average of separately calculated average mean grades of each separate continuous median grade line.

BUILDING, DETACHED — A building surrounded by an open space on the same lot.

BUILDING ENVELOPE — The sole area on a lot, less than allowed by applicable setback requirements, for the placement of a building or other structures. **[Added 11-13-1990 STM by Art. 19, AG approval 3-19-1991]**

BUILDING COMMISSIONER — The chief official of the Town of Nantucket who is responsible for the administration and enforcement of Code of Massachusetts Regulations 780, State Board Building Regulations and Standards.**[Added 4-10-2000 ATM by Art. 36, AG approval 8-2-2000; amended 4-2-2016 ATM by Art. 60, AG approval 7-12-2016]**

BUILDING INSPECTOR — The Building Commissioner, or his/her designee, otherwise referred to in this chapter as the "Inspector of Buildings." **[Amended 4-10-2000 ATM by Art. 46, AG approval 8-2-2000]**

BUILDING, PRINCIPAL — A nonaccessory building on a lot in which a principal use is conducted.

BULK MERCHANDISE RETAIL — The sale of goods that require a large amount of floor space and which involves goods both warehoused and retailed at the same location. Items for sale include large, categorized products such as household appliances, furniture, construction and lawn equipment, electrical and heating fixtures and supplies, plumbing fixtures and supplies.[5] **[Added 4-2-2013 ATM by Art. 30, AG approval 7-26-2013]**

CATERING SERVICE — An establishment in which food, meals, and incidental services are prepared and then delivered to another location for consumption.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

CLINIC, MEDICAL OR DENTAL — Offices organized as a unified facility by one or more physicians, dentists, chiropractors or other licensed practitioners to provide medical or dental

4. **Editor's Note: The definition of "breezeway," as amended, which immediately followed this definition, was repealed 11-6-2017 STM by Art. 18, AG approval 2-26-2018.**

5. **Editor's Note: The definition of "capital improvements," which immediately followed this definition, was repealed 4-6-2015 ATM by Art. 64, AG approval 8-5-2015.**

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treatment and examination, but not including bed-patient care.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

CLUB — Buildings and facilities, owned or operated by a corporation, association, person or persons, for a social, educational, or recreational purpose, to which membership is required for participation and not primarily operated for profit nor to render a service that is customarily carried on as a business.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

COMMERCIAL — As in a trade, occupation, or business, including a transient residential facility, but excluding governmental, religious or private residential uses.

COMMERCIAL WECS — A WECS designed or operated to provide energy principally to consumers located off the premises and does not meet the requirements established for a residential WECS.

CONSTRUCT — To build, erect or assemble.[6]

CONTRACTORS SHOP — An establishment used for the indoor repair, maintenance, or storage of a contractor's vehicles, equipment, or materials, and may include the contractor's business office but which does not use any exterior storage area.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

CONVENIENCE STORE — A retail store offering for sale groceries and household items intended for the convenience of the neighborhood with a floor area of less than 2,500 square feet; does not include automotive service stations or vehicle repair shops.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

COUNTRY OVERLAY DISTRICT — The overlay district described in § 139-12F.[7]**[Added 4-9-2002 ATM by Art. 37, AG approval 7-31-2002]**

DAY-CARE CENTER — Any institution or place which receives for temporary custody, separate and apart from their parents, five or more children not of common parentage, under seven years of age, during part or all of the day, with or without stated educational purposes.

DISPOSAL — Any discharge, deposit, injection, dumping, spilling, leaking or placing so that waste may enter ground or surface water.

DOCK or PIER or WHARF — Each such word shall mean the same for purposes of this chapter, and shall be used interchangeably, either singularly or in the plural, in the conjunctive or in the disjunctive, and shall mean any structure, floating or fixed, attached or adjacent to land, and placed in or and extending into coastal inland waters (in the case of tidal waters, seaward of the mean high tide line) which is designed, or is suitable for use, for access to vessels, or for swimming or any other similar recreational, commercial, or educational purpose.[8]**[Added 4-10-2000 ATM by Art. 30, AG approval 8-2-2000]**

DRIVEWAY ACCESS — A vehicular access point onto any public way, private way or any way customarily used by the public for purposes for which a public way is generally used in the Town or County of Nantucket.[9]**[Added 4-9-2001 ATM by Art. 27, AG approval 8-2-2001]**

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6. Editor's Note: The definition of "construction," which immediately followed this definition, was repealed 4-6-2011 ATM by Art. 64, AG approval 9-15-2011.

7. Editor's Note: The definition of "CPI," which immediately followed this definition, was repealed 4-6-2011 ATM by Art. 64, AG approval 9-15-2011, and the definition of "customary home occupation," which immediately followed was repealed 1-8-2001 STM by Art. 5, AG approval 4-10-2001. See now the definition of "home occupation."

8. Editor's Note: The definition of "dormitory housing," added 4-9-2001 ATM by Art. 38, AG approval 8-2-2001, which immediately followed this definition, was repealed 4-8-2008 ATM by Art. 55, AG approval 8-18-2008.

9. Editor's Note: The definition of "dwelling," which immediately followed this definition, was repealed 4-6-2009 ATM by Art. 27, AG

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DUPLEX — A structure containing two dwelling units, but not including primary dwelling with an accessory dwelling unit or tertiary dwelling unit contained therein. In the R-1 and ROH/SOH Districts only, both dwelling units shall be in the same ownership except when at least one dwelling unit is subject to a Nantucket Housing Needs Covenant (NHNC). A duplex shall not be construed to include a primary dwelling and secondary dwelling as defined in this chapter.**[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009; amended 4-6-2015 ATM by Art. 64, AG approval 8-5-2015; 11-6-2017 STM by Art. 18, AG approval 2-26-2018; 5-6-2023ATM by Art. 41, AG approval 9-8-2023]**

DWELLING UNIT — A room or enclosed floor space used, or to be used, as a habitable unit for one family or household, with facilities for sleeping, cooking and sanitation.

ELDER HOUSING FACILITIES — One or more structures used for independent living, assisted living, skilled nursing care, hospice care, and other long-term residential care for persons 55 or older or the disabled. Such structures may be detached dwelling units, attached dwelling units, integrated dwelling units, and/or multiple-bedroom long-term care facilities, as well as associated and ancillary facilities and services.**[Added 4-10-2000 ATM by Art. 27, AG approval 8-2-2000; amended 9-21-2009 STM by Art. 16, AG approval 12-11-2009]**

ELIGIBLE HOUSEHOLD — A household whose total annual income is less than 150% of the median annual household income for Nantucket County as determined by the most recent calculation of the U.S. Department of Housing and Urban Development.**[Amended 11-13-1990 STM by Art. 18, AG approval 3-19-1991; 4-8-2008 ATM by Art. 57, AG approval 8-18-2008]**

EMPLOYER DORMITORY — A dwelling on a lot occupied by a legally permitted or nonconforming commercial or nonprofit recreational use, or on an adjoining lot under the same ownership, all located outside of the TOD in which sleeping accommodations for more than five persons are provided by one or more employers, with occupancy limited solely to their employees.**[Amended 4-10-2000 ATM by Art. 31, AG approval 8-2-2000; 4-9-2001 ATM by Art. 37, AG approval 8-2-2001; 4-9-2001 ATM by Art. 38, AG approval 8-2-2001; 4-8-2008 ATM by Art. 55, AG approval 8-18-2008; 4-2-2013 ATM by Art. 30, AG approval 7-26-2013]**

ERECT — To construct or reconstruct or excavate, fill, drain or conduct physical operations of any kind in preparation for or in pursuance of construction or reconstruction; or to move a building or structure upon a lot.

FAMILY — One or more persons occupying a dwelling unit and living as a single household.**[Amended 4-6-2015 ATM by Art. 64, AG approval 8-5-2015]**

FLOOD HAZARD DISTRICT — An overlay district to all other districts. The district includes all special flood hazard zones designated as Zone A, AH, AO, A5-8, V5-8, and the FEMA Flood Boundary and Floodway Map, all of which indicate the one-hundred-year regulatory floodplain on Nantucket's Flood Insurance Rate Map (FIRM), dated July 2, 1992, and issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program (NFIP). Exact boundaries are further defined by the Flood Insurance study booklet dated June 3, 1986. The FIRM, and Flood Insurance Study booklet are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Commissioner, and Conservation Commission. **[Added 5-4-1993 ATM by Art. 44, AG approval 5-24-1993]**

FLOOR AREA, GROSS — The sum of the areas of the several floors of the structure, as measured by the exterior faces of the walls, including fully enclosed porches and the like as measured by the exterior limits thereof, but excluding basement and cellar areas devoted exclusively to uses

approval 8-10-2009.

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accessory to the operation of the structure; and areas devoted to housing mechanical equipment customarily located in the basement or cellar, such as heating and air-conditioning equipment, plumbing, electrical equipment, and residential laundry facilities.

FOOD PROCESSING ESTABLISHMENT — Manufacturing establishments that produce or process foods for consumption. Includes: (1) bakery products, sugar and confectionery products primarily for wholesale distribution, but not including a "bakery" as herein defined; (2) dairy products processing; (3) fats and oil products (including rendering plants); (4) fruit and vegetable canning, preserving, and related processing; (5) grain mill products and by-products; (6) meat, poultry, and seafood canning, curing, and byproduct processing; and (7) distilleries.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008; amended 11-6-2017 STM by Art. 18, AG approval 2-26-2018]**

FORMULA BUSINESS — A type of retail sales establishment, restaurant, tavern, bar, or take-out food establishment which is under common ownership or control or is a franchise, and is one of 10 or more other businesses or establishments worldwide maintaining two or more of the following features:**[Added 4-4-2006 ATM by Art. 42, AG approval 10-26-2006; amended 4-2-2013 ATM by Art. 31, AG approval 7-26-2013]**

(1) Standardized menu or standardized array of merchandise with 50% or more of in-stock merchandise from a single distributor bearing uniform markings.

(2) Trademark or service mark, defined as a word, phrase, symbol or design, or a combination or words, phrases, symbols or designs, that identifies and distinguishes the source of the goods from one party from those of others, on products or as part of store design, such as cups, napkins, bags, boxes, wrappers, straws, store signs or advertising devices.

(3) Standardized color scheme used throughout the interior or exterior of the establishment, including, but not limited to, graphics, awnings, signage, and the like visible from the exterior of the structure.

(4) Standardized interior decor, including, but not limited to, style of furniture, wall coverings, permanent fixtures, displays, window treatments.

(5) Standardized uniform, including but not limited to aprons, pants, shirts, smocks or dresses, hat, and pins (other than name tags).

FRONTAGE — The lineal extent of the boundary between a lot and an abutting street measured along a single street line affording legal and practical access to the lot. For a lot abutting two or more streets, frontage is measured along any single street line of the lot. Frontage shall not include jogs in street width, backup strips and other irregularities in street line, such as at a turning "T" or hammerhead turnaround or street-width change.

GARAGE — A building for covered shelter of one or more motor vehicles. A garage shall be for vehicle parking at grade, or for commercial storage, repair, washing, painting or other servicing of motor vehicles. The Planning Board shall be the special permit granting authority for residential garages serving as a primary use on a lot.**[Amended 4-2-2013 ATM by Art. 30, AG approval 7-26-2013]**

GARAGE APARTMENT — A dwelling unit located within a residential or commercial garage. The dwelling unit shall not exceed 150% of the gross floor area of the garage. If located on the same lot as a primary dwelling unit, the following requirements shall be applicable:**[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009; amended 4-6-2011 ATM by Art. 64, AG approval 9-15-2011]**

(1) Both dwelling units shall be in the same ownership unless one of the two dwelling units

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is subject to the NHNC. The ownership of a lot by a condominium cooperative housing corporation, land trust, or other common interest ownership entity in which there is a separate beneficial ownership of the primary dwelling and garage apartment on the lot shall not be deemed to constitute "the same legal and beneficial ownership."

(2) The Planning Board shall make a determination regarding the adequacy of access to the lot and structures prior to the issuance of a building permit. Planning Board approvals granted after April 8, 1996, shall be valid for a period of two years from the date of plan endorsement.

GROUND COVER — The horizontal area of a lot covered at grade by structures, together with those portions of any overhangs which contain enclosed interior space; excluding, for instance, tents, retaining walls, substantially below grade finished or unfinished space, exterior insulation, decks, unenclosed porches, unenclosed roofed overhangs and connectors, entryway hoods and projections, gazebos, pergolas, play structures, platforms and steps, docks, game playing courts at grade, exterior in-ground residential swimming pools, exterior in-ground or above grade hot tub/spas, chimneys, bulkheads, bay and bow windows, window wells, unenclosed breezeways, air-conditioning units, generators and generator enclosures, mechanical and utility equipment, unroofed walled enclosures, exterior showers, fuel tanks, roof eaves, trash bins, and one or more detached sheds not exceeding an aggregate 200 square feet ground cover, and none taller than 16 feet in height, as measured from the top of the slab, pier, or crawl space foundation(s).**[Added 4-15-2003 ATM by Art. 48, AG approval 8-27-2003; amended 4-5-2014 ATM by Art. 68, AG approval 5-7-2014; 4-6-2015 ATM by Art. 64, AG approval 8-5-2015; 11-6-2017 STM by Art. 18, AG approval 2-26-2018; 4-1-2019 ATM by Art. 49, AG approval 8-6-2019; 4-1-2019 ATM by Art. 56, AG approval 8-6-2019; 5-6-2023ATM by Art. 38, AG approval 9-8-2023]**

GROUND COVER RATIO — The ground cover upon a lot divided by the area of the lot, expressed as a percentage.**[Amended 4-12-1999 ATM by Art. 29, AG approval 8-10-1999; 4-15-2003 ATM by Art. 48, AG approval 8-27-2003]**

HAZARDOUS OR TOXIC MATERIALS — Liquid hydrocarbon products, including but not limited to residual oil, gasoline, fuel oil, diesel oil and any other toxic, caustic or corrosive chemicals, radioactive materials and other substances defined as being hazardous or toxic by the Massachusetts Division of Hazardous Waste under the provisions of MGL c. 21C and c. 21E. **[Amended 5-4-1993 ATM by Art. 42, AG approval 5-24-1993]**

HEALTH SPA — A place or building where massage, beauty treatment, cosmetic procedures, and related activities take place.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

HISTORICAL HIGH WATER TABLE — The highest groundwater elevation that is likely to occur at a given location, based on calculations made in accordance with the high groundwater methodology specified in the U.S.G.S. Water Resource Investigations Circular #83-4112 by Frimpter et al., and any subsequent revisions. **[Added 4-14-1997 ATM by Art. 48, AG approval 8-18-1997]**

HOME OCCUPATION — An occupation, trade, profession, or business activity conducted as an accessory use wholly or partly within a dwelling unit or in one or more accessory structures.**[Added 1-8-2001 STM by Art. 5, AG approval 4-10-2001; amended 4-6-2009 ATM by Art. 27, AG approval 8-10-2009]**

(1) Home occupations shall be subject to the following requirements:

(a) The home occupation shall be conducted by occupants of a dwelling upon the lot, and not more than one additional worker who is not an occupant of a dwelling upon the lot.

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(b) There shall be no exterior storage of material or equipment, unless effectively screened by a wall, fence or densely planted vegetative buffer.

(c) The gross floor area used in connection with the home occupation shall not exceed 800 square feet, not more than 200 square feet of which shall be used for retail sales.

(d) The home occupation, as projected, shall not generate an average daily traffic generation during the months of June through September that exceeds 14 vehicle trips per day.

(e) A use permit shall be obtained from the Building Commissioner for the home occupation.

(f) There shall be no retail sales except of commodities prepared, crafted or otherwise produced upon the lot.

(2) Special permit relief. A special permit may be granted by the special permit granting authority for a home occupation (including multiple home occupations upon the same lot, collectively) which employs more than one nonresident of the lot, or which conducts retail sales in a gross floor area exceeding 200 square feet, provided that all of the other requirements are met and the criteria for the granting of a special permit under § 139-30 are met, and a home occupation for which a special permit is granted hereunder shall be subject to the provisions for minor site plan review under § 139-23.[10]

HOSPITAL — A health care facility providing patient treatment with specialized staff and equipment, including, but not limited to, bed-patient care, medical testing facilities, wellness center, rehabilitation facilities, medical offices (i.e., medical clinic), and ancillary facilities customarily associated with a hospital such as a helicopter landing pad, employee housing, maintenance facilities, retail sale of convenience and gift related items, and cafeteria and food services. A hospital shall be exempt from § 139-11.[11]**[Added 4-6-2015 ATM by Art. 70, AG approval 8-5-2015]**

HOTEL — A building or buildings on a lot containing a commercial kitchen and rental sleeping units without respective kitchens, primarily the temporary abode of persons who have a permanent residence elsewhere.**[Amended 4-6-2009 ATM by Art. 27, AG approval 8-10-2009]**

IMPERVIOUS — For the purpose of enforcing the provisions of the Public Wellhead Recharge District, the term "impervious" shall mean those surfaces which will result in little or no infiltration of stormwater through underlying soil layers. Surfaces such as concrete, bituminous concrete, brick, or similar interlocking surfaces which have no interstitial gaps or openings shall be considered impervious. The designated review authority shall determine whether alternative paving surfaces which have interstitial openings can be deemed to reduce the impervious coverage of a lot. **[Added 4-14-1997 ATM by Art. 48, AG approval 8-18-1997]**

INCLUSIONARY UNIT — Any rental dwelling unit required pursuant to § 139-11H restricted to employee occupancy.[12]**[Amended 11-13-1990 STM by Art. 18, AG approval 3-19-1991; 4-14-1997 ATM by Art. 48, AG approval 8-18-1997; 4-6-2015 ATM by Art. 64, AG approval 8-5-2015; 6-25-2020ATM by Art. 52, AG approval 10-27-2020]**

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10. **Editor's Note: The former definition of "household," which immediately followed this definition, was repealed 4-6-2015 ATM by Art. 64, AG approval 8-5-2015.**

11. **Editor's Note: The former definition of "hot tub/spa," which immediately followed this definition, was repealed 5-6-2023ATM by Art. 39, AG approval 9-8-2023.**

12. **Editor's Note: The former definition of "independent living cottages," added 4-10-2000 ATM by Art. 27, AG approval 8-2-2000, which immediately followed this definition, was repealed 9-21-2009 STM by Art. 16, AG approval 12-11-2009.**

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JUNK YARD — A structure or lot used in connection with a business for collection, storage, or sale of waste or scrap materials.**[Added 4-5-2014 ATM by Art. 68, AG approval 5-7-2014]**

KENNEL — A building for the boarding for pay or hire of four or more dogs.

LANDSCAPE CONTRACTOR — A business engaged in the decorative and functional alteration, planting, and maintenance of grounds. Such a business may engage in the installation and construction of underground improvements but only to the extent that such improvements (e.g., drainage facilities) are accessory to the principal business and are necessary to support or sustain the landscaped surface of the ground. Exterior storage of equipment and/or materials must be effectively screened by a wall, fence, or densely planted vegetative buffer.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008; amended 6-25-2020ATM by Art. 52, AG approval 10-27-2020]**

LARGE SCALE GROUND-MOUNTED SOLAR PHOTOVOLTAIC INSTALLATION — A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted and has a minimum nameplate capacity of 250 kW DC.**[Added 4-1-2019 ATM by Art. 62, AG approval 8-6-2019]**

LIGHT MANUFACTURING — An establishment engaged in the indoor manufacturing, processing, or fabrication of materials or products.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

LODGING, ROOMING OR GUEST HOUSE — A building or buildings on a lot containing rental sleeping units without respective kitchens, and not having a commercial kitchen, primarily the temporary abode of persons who have a permanent residence elsewhere.**[Amended 4-6-2009 ATM by Art. 27, AG approval 8-10-2009]**

LOT — A tract of land in common ownership, including land under water, not divided by a street, which may include multiple parcels of adjacent land in common ownership to the extent necessary to eliminate or minimize zoning nonconformities. However, two or more adjacent parcels in common ownership, each of which complies with all applicable zoning requirements, or each of which has been lawfully improved with one or more dwellings conforming to all applicable zoning requirements, if any, at the time of construction thereof, and each of which parcels was in compliance with area and frontage requirements applicable thereto at the time of such construction, shall be considered to be separate lots for all purposes under this chapter, notwithstanding any subsequently effective amendment to this chapter. **[Amended 4-12-1994 ATM by Art. 50, AG approval 4-29-1994]**

LOT AREA — The horizontal area of the lot exclusive of any area in a street or private way open to the public use or land seaward of the mean high tide line of any harbor, sound, ocean or estuary. For any lot created after November 14, 1990, 90% of the minimum lot area required for the zoning district in which such lot is situated must be exclusive of areas subject to the protection under the Wetlands Protection Act, MGL c. 131, § 40, not including areas defined as land subject to coastal storm flowage, coastal flooding or inundation, or any area defined as a buffer zone under such statute. In addition, for any lot created after April 5, 2011, the wetlands defined in the local Wetlands Bylaw, Chapter 136 of the Code of the Town of Nantucket, shall also apply, not including areas defined as land subject to coastal storm flowage, coastal flooding or inundation, or any area defined as a buffer zone under such statute.**[Amended 11-13-1990 STM by Art. 16, AG approval 3-19-1991; 5-5-1992 ATM by Art. 36, AG approval 8-3-1992; 4-4-2011 ATM by Art. 60, AG approval 9-15-2011]**

LOT LINE — A line bounding a lot, including a street line or an interior line which divides the lot from another lot, or a natural boundary line for a lot.

LUMBERYARD — A facility where building materials such as lumber, plywood, drywall, cement blocks, roofing materials, insulation, and the like, including related products such as wallpaper,

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plumbing and electrical supplies, paint, glass, and hardware, are stored and sold.**[Added 4-2-2013 ATM by Art. 30, AG approval 7-26-2013]**

MAJOR COMMERCIAL DEVELOPMENT — See § 139-11.

MARIJUANA ESTABLISHMENT, RECREATIONAL — A marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business as defined in MGL c. 94G, § 1, and 935 CMR 500.00, unless otherwise defined in this section. Recreational marijuana establishments are subject to the following standards:**[Added 11-6-2017 STM by Art. 2, AG approval 2-26-2018; amended 10-10-2018 STM by Art. 1, AG approval 8-6-2019]**

(1) Recreational marijuana establishments shall be located in standalone facilities and shall not be allowed within a building or structure containing other retail, commercial, residential, industrial, or other uses, except for colocation with a licensed medical marijuana treatment center.

(2) A minimum separation of 500 feet, measured between lot lines, is required between recreational marijuana establishments and state-certified public or private schools or state-licensed day-care centers.

(3) Except where co-located, a minimum separation of 2,000 feet, measured between lot lines, is required between recreational marijuana establishments.

(4) No building permit for a recreational marijuana establishment shall issue until the applicant has executed a host community agreement with the Town pursuant to MGL c. 94G, § 3(d).

(5) A recreational marijuana establishment shall be required to obtain an annual certificate of inspection issued by the Inspector of Buildings.

(6) A recreational marijuana retailer must operate and provide all storage within a permanent structure.

(7) A recreational marijuana establishment shall not be eligible for qualification as a home occupation.

(8) On-site consumption of marijuana products is prohibited.

(9) Delivery of cannabis products to consumers is prohibited.

(10) A special permit for a recreational marijuana establishment shall be limited to the applicant at the time of special permit issuance. Any changes to the owner/operator/licensee shall require a new special permit.

(11) A recreational marijuana establishment shall not generate outside odors from the processing or manufacturing of marijuana or marijuana products.

(12) An applicant for a special permit for a recreational marijuana establishment shall obtain a provisional license from the Cannabis Control Commission prior to submitting an application to the Planning Board for a special permit.

MARIJUANA MEMBERSHIP CLUB — An organization, club, lodge, other private grounds allowing on-site consumption of cannabis or marijuana products, but not operating as a licensed marijuana social consumption operator and where no sales occur.**[Added 10-10-2018 STM by Art.**

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1, AG approval 8-6-2019]

MARIJUANA PRODUCTS — Cannabis or marijuana and its products unless otherwise indicated and as defined in MGL c. 94G, § 1, as may be amended. These include products that have been manufactured and contain cannabis or an extract from cannabis or marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.**[Added 10-10-2018 STM by Art. 1, AG approval 8-6-2019]**

MARIJUANA TREATMENT CENTER, MEDICAL — A premises approved under a medical use marijuana license pursuant to MGL c.94I that acquires, cultivates, processes, transports, sells, distributes, dispenses or administers marijuana for the benefit of registered qualifying patients in the treatment of debilitating medical conditions or the symptoms thereof. Medical marijuana treatment centers are subject to the following standards:**[Added 11-6-2017 STM by Art. 2, AG approval 2-26-2018]**

(1) Medical marijuana treatment centers shall be located in standalone facilities and shall not be allowed within a building or structure containing other retail, commercial, residential, industrial, or other uses, except for co-location with a licensed recreational marijuana establishment.

(2) A minimum separation of 500 feet, measured between lot lines, is required between medical marijuana treatment centers and state-certified public or private schools or state-licensed day-care centers.

(3) No building permit for a medical marijuana treatment center shall issue until the applicant has executed a Host Community Agreement with the Town pursuant to MGL c.94G, § 3(d).

MARITIME SERVICE STATION — A marine establishment which may include, but not be limited to, boat fuel sales, boat sales, boat rental, boat construction, boat maintenance, repair, and incidental painting, and marine equipment sales or rental.**[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009]**

MEAN GRADE — The median grade line established between existing grade and finish grade measured along a line four feet from the perimeter of the building or structure, extended four feet beyond the building or structure at each end. **[Amended 4-12-1994 ATM by Art. 55, AG approval 4-29-1994]**

MEANS OF ACCESS — A way affording vehicular access to a lot and across the line of the way [or lot line, for lots within the scope of § 139-33E(1)(b) below] and having sufficient width, suitable grades and adequate construction to provide for the year-round needs of vehicular traffic in relation to the way's prospective use and for the installation of utility services.[13]**[Amended 5-5-1992 ATM by Art. 44, AG approval 8-3-1992]**

MINING — The removal of any geologic material, including but not limited to topsoil, sand, gravel and clay, not to include removal associated with on-site road and building construction.[14]

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13. Editor's Note: The former definition of "medical marijuana treatment center," which immediately followed this definition, was amended 4-5-2014 ATM by Art. 68 to become "registered marijuana dispensary," which was repealed 11-6-2017 STM by Art. 2, AG approval 2-26-2018.

14. Editor's Note: The former definition of "motel," which immediately followed this definition, was repealed 4-6-2009 ATM by Art. 27, AG approval 8-10-2009. The former definition of "multi-family dwelling," added 4-10-2000 ATM by Art. 33, AG approval 8-2-2000, as amended, which also followed this definition, was repealed 4-2-2013 ATM by Art. 30, AG approval 7-26-2013. The former definition of "moderately priced housing," which also followed this definition, added 4-12-1994 ATM by Art. 48, AG approval

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MOTOR VEHICLE PARKING LOTS OR STRUCTURES — A commercial use dedicated to exterior or interior vehicular parking. Motor vehicle parking lots or structures that are constructed to meet the off-street parking requirements of § 139-18 of this chapter shall not be considered a separate use from the use requiring the off-street parking.**[Added 4-2-2016 ATM by Art. 60, AG approval 7-12-2016]**

MUNICIPAL — Of or by the Town of Nantucket, the County of Nantucket, or any agency, board or department thereof; and specifically including the Nantucket Islands Land Bank.**[Added 4-6-2015 ATM by Art. 66, AG approval 8-5-2015]**

NANTUCKET HOUSING NEEDS COVENANT-OWNERSHIP FORM — Shall mean a covenant affecting the title to real property, created pursuant to Chapter 100 of the Code of the Town of Nantucket, which relates to and regulates the terms of the purchase, sale and ownership of real property not held as a condominium (the "NHNC-Ownership Form").**[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009]**

NEIGHBORHOOD EMPLOYEE HOUSING — Housing for the exclusive use of employers who own or lease space on a lot, for the purpose of housing their employees, their spouses, domestic partners and dependents. A maximum of two dwelling units shall be permitted per lot with occupancy limited to a total of 18 persons. In the R-1, ROH, R-5, R-10, R-20, and R-40 Districts only, there shall be no more than two lots containing neighborhood employee housing or employer dormitory units (conforming or preexisting nonconforming), within a 1,000 foot radius. The Planning Board shall be the special permit granting authority. Site plan review in accordance with § 139-23 and the submission of a dormitory management plan shall be required.**[Added 4-9-2001 ATM by Art. 37, AG approval 8-2-2001; amended 4-2-2013 ATM by Art. 30, AG approval 7-26-2013]**

NONCONFORMING STRUCTURE, USE OR LOT — A structure or a use or lot that does not conform to a zoning restriction of this chapter for the zoning district in which it is located, provided that the nonconformity was lawfully in existence on the July 27, 1972, effective date of this chapter, or in the case of a structure, use or lot made nonconforming by an amendment of this chapter, on the effective date of such amendment.[15]

OFFICE — The building, room or building space where the clerical work of a business, trade or occupation, or profession is conducted or where the work of administration is conducted. Commercial office space shall not include any trading in merchandise or manufacturing or fabricating.

OPEN AIR MARKET — An occasional or periodic market held in an open area or in a structure where groups of individual sellers licensed by the Select Board offer for sale to the public such items as fresh produce, seasonal fruits, fresh flowers, arts and crafts items, and food and beverages (but not to include second-hand goods) dispensed from booths located on-site.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008; amended 6-25-2020ATM by Art. 70, approved 10-27-2020]**

OPEN LAND — A parcel or parcels of land or an area of water or wetlands or a combination of land and water or wetlands, not including streets, set aside in an undeveloped state.

ORIGINAL LOT — An existing lot, dividable into two lots pursuant to § 139-8C.**[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009; amended 4-2-2016 ATM by Art. 54, AG approval 7-12-2016]**

OUTBUILDING(S) — Detached accessory residential structure(s) such as a cabana, barn, hoop barn,

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4-29-1994, and amended 4-8-2008 ATM by Art. 29, AG approval 8-18-2008, was repealed 4-6-2015 ATM by Art. 64, AG approval 8-5-2015.

15. Editor's Note: The definition of "occupied," which immediately followed this definition, was repealed 4-6-2015 ATM by Art. 64, AG approval 8-5-2015.

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shanty, greenhouse, gazebo, playhouse, fitness studio, home office, but not including dwelling units or structures used for habitation, studios, or sheds.**[Added 4-2-2013 ATM by Art. 30, AG approval 7-26-2013]**

OWNER OCCUPIED — The primary residence, or temporary (seasonal) residence, of a person(s) or the individual beneficiaries of a legal entity that holds title to the property, where such persons are physically present and living within dwelling units on said property for at least three months each calendar year. Properties owned by corporations and the like, time sharing interval dwelling units, or where all units are made available for rent do not qualify as owner occupied.**[Added 4-6-2015 ATM by Art. 62, AG approval 8-5-2015]**

OWNERSHIP — Record title to land, as shown upon deeds or other documents of title on file at the Nantucket Registry of Deeds, the Nantucket Registry District of the Land Court, the Registries of Probate, or other applicable public offices.**[Added 4-6-2015 ATM by Art. 65, AG approval 8-5-2015]**

PARKING SPACE — An area dedicated to the parking of a motor vehicle meeting the requirements of § 139-18.**[Added 4-9-2001 ATM by Art. 27, AG approval 9-2-2001; amended 4-6-2015 ATM by Art. 64, AG approval 8-5-2015]**

PARKING SPACE: TANDEM/STACKED — A group of two or more parking spaces arranged one behind the other where one space blocks access to the other space.**[Added 4-15-2003 ATM by Art. 30, AG approval 8-27-2003]**

PERSONAL SERVICES — Establishments providing services generally related to personal non-medical needs, including, but not limited to: beauty and barber, clothing rental, garment repair, and shoe repair shops, tanning salons, photography studios, psychic reading, tattoo or body piercing studio, upholster shop, personal training. These uses may also include accessory retail sales of products related to the services provided. No personal service establishment shall exceed 3,000 square feet of floor area, and the aggregation of such service establishments on a lot (or on contiguous lots in one ownership) shall not exceed 4,000 square feet of floor area.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008; amended 4-6-2009 ATM by Art. 27, AG approval 8-10-2009; 4-6-2015 ATM by Art. 64, AG approval 8-5-2015]**

PERSONAL WATERCRAFT — A small vessel of less than 16 feet in length which uses an inboard motor powering a waterjet pump or a propeller as its primary source of motive power and that is designed to be operated by a person sitting, standing or kneeling on the vessel rather than the conventional manner of sitting or standing inside a vessel. This term includes jet skis, wet bikes and surf jets.**[Added 4-8-2008 ATM by Art. 49, AG approval 8-18-2008]**

PHARMACY — An establishment engaged in the retail sale of prescription drugs, nonprescription medicines, home and personal care products, and related supplies.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

PRIMARY DWELLING — A detached single-family dwelling unit or the portion of a structure that contains a single dwelling unit. A primary dwelling may contain an attached garage.[16]**[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009; amended 4-6-2011 ATM by Art. 64, AG approval 9-15-2011]**

PRINT SHOP — A retail establishment that provides duplicating services using photocopying, blueprint, and offset printing equipment and may include the collating and binding of booklets and reports.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

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16. Editor's Note: The former definition of "primary lot," added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009, which immediately followed this definition, was repealed 4-2-2016 ATM by Art. 54, AG approval 7-12-2016.

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QUALIFIED FAMILY MEMBER DEED RESTRICTION — A deed restriction accepted and enforceable by the town of Nantucket, which limits owner-occupancy of a subject lot to the owner of the lot at the time the lot was subdivided into secondary lots, or the owner's spouse, and/or their parent(s), grandparent(s), children, brother(s) and/or sister(s). This deed restriction shall only be released by the Town in the event that an NHNC Ownership Form replaces this restriction.**[Added 4-1-2019 ATM by Art. 48, AG approval 8-6-2019]**

RECHARGE — The addition of water to the saturated zone of an aquifer. **[Added 4-14-1997 ATM by Art. 48, AG approval 8-18-1997]**

RECREATIONAL FACILITY — Golf courses, tennis, paddle, and racquet courts, bowling alleys, fitness centers, or the like, including any uses ancillary to the recreational facility. In the R-10 District only, the recreational facility may include accessory uses such as a restaurant, catering facility, snack bar, or pro shop that operate independently from the recreational facility.[17]**[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009]**

RESIDENTIAL RECREATIONAL OUTDOOR WATER FEATURE**[Added 5-6-2023 ATM by Art. 39, AG approval 9-8-2023]** —

(1) A structure designed to be used for recreational purposes, either above or below grade, containing water more than 24 inches in depth. This shall not include ornamental ponds, decorative water features, including, but not limited to, fountains, bird baths, and the like. The residential recreational outdoor water feature must be located on the same or contiguous lot as a residential dwelling or constructed for the benefit of a group of residences, such as a multifamily development, subdivision, or in conjunction with a neighborhood association.

(2) Three types of residential recreational outdoor water features may be permitted:

(a) Hot tub/spa: a structure containing less than 100 square feet of surface area designed to be heated and containing seats/benches and jets.

(b) Small swimming pool: a structure containing 150 square feet or less of surface area. May be designed to be heated and may contain seat/benches, jets, or other features, but not including a diving board, slide, or the like.

(c) Large swimming pool: a structure containing more than 150 square feet of surface area. May include any feature, including a built-in hot tub/spa.

(3) In the VR District only, the Zoning Board of Appeals, acting as the special permit granting authority, may grant a special permit to allow a small or large swimming pool on a lot, subject to the following criteria being met: 1) the lot must meet or exceed the minimum lot size for the district, and 2) side and rear yard setbacks of 20 feet shall apply to the residential swimming pool and associated mechanical equipment.

(4) In the R-1, SR-1, R-5, and R-5L Districts only, the following criteria must be met for a small or large swimming pool: 1) a minimum lot area of 7,500 square feet is required, and 2) side and rear yard setbacks of 10 feet shall apply to the residential swimming pool and associated mechanical equipment. This requirement shall apply to residential swimming pools for which a building permit is issued after September 30, 2021.

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17. Editor's Note: The former definition of "registered marijuana dispensary," added 4-2-2013 ATM by Art. 30, as amended, which immediately followed this definition, was repealed 11-6-2017 STM by Art. 2, AG approval 2-26-2018. See now the definitions of "marijuana establishment, recreational" and "marijuana treatment center, medical."

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RESIDENTIAL WECS — A WECS designed or operated to provide energy principally to the residence and accessory structures located on the lot, or on contiguous lots held in common ownership. A WECS designed or operated to provide more than 50% of its rated energy production for off-site consumption shall not be considered residential except in cases where such power is consumed by residences of adjacent property or within 1,000 feet, whichever is greater.**[Amended 4-6-2009 ATM by Art. 47, AG approval 8-10-2009]**

SECONDARY DWELLING — A detached single-family dwelling unit located on the same lot as a primary dwelling unit. The ground cover of the secondary dwelling shall be a minimum of 20% less or more than the primary dwelling. The secondary dwelling may contain an attached garage. The primary and secondary dwelling must be separated by a minimum distance of 10 feet, measured at grade at the closest point between the dwellings; excluding retaining walls, window wells, platforms, decks, and steps, chimneys, bulkheads, bay windows, bow windows, roof eaves and overhangs, air conditioning units, a maximum of two aboveground fuel tanks not to exceed 120 gallons each, trash bins, and fences. Relief from the ground cover and scalar separation requirements of this definition may be granted by a special permit issued by the Planning Board subject to a finding that the reduced separation is in harmony with the general purpose and intent of this chapter. A secondary dwelling may only be attached to the primary dwelling by a breezeway.**[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009; amended 4-5-2010 ATM by Art. 56, AG approval 8-5-2010; 4-6-2011 ATM by Art. 64, AG approval 9-15-2011; 4-2-2013 ATM by Art. 40, AG approval 7-26-2013; 11-6-2017 STM by Art. 18, AG approval 2-26-2018; 4-3-2018 ATM by Art. 45; AG approval 7-18-2018]**

Both dwelling units shall be in the same ownership unless one of the two dwelling units is subject to the NHNC. The ownership of a lot by a condominium cooperative housing corporation, land trust, or other common interest ownership entity in which there is a separate beneficial ownership of the principal and secondary dwellings on the lot shall not be deemed to constitute "the same legal and beneficial ownership."

The Planning Board shall make a determination regarding the adequacy of access to the lot and structures prior to the issuance of a building permit. Planning Board approvals granted after April 8, 1996, shall be valid for a period of two years from the date of plan endorsement.

The principal purpose of secondary dwellings is to create housing opportunities through the provision of affordable rental housing for year round residents, including senior citizens, while affording the owner of the primary residence with the opportunity to generate supplemental income. The intent of this provision is also that one of the two dwellings be designated and constructed at such scale and bulk so as to be clearly subordinate in both use and appearance.

Notwithstanding any language contained herein to the contrary, any property that is owned by a validly created and existing cooperative housing corporation as of December 31, 2012, may be converted to a residential condominium form of ownership, maintaining the separate beneficial ownership of the primary and secondary dwellings, without subjecting such property to the Nantucket Housing Needs Covenant.[18]

SECONDARY LOTS — Lots created by the division of the original lot into two lots pursuant to § 139-8C. One of the two lots shall be subject to an NHNC-Ownership Form, or shall be owner-occupied by a qualified family member, in which case the lot shall be subject to the NHNC-Ownership Form, except for the established income and asset limits, or shall be subject to a qualified

18. Editor's Note: See Ch. 100, Nantucket Housing Needs Covenant Program.

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family member deed restriction.**[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009; amended 4-2-2016 ATM by Arts. 54, 55, AG approval 7-12-2016; 4-1-2019 ATM by Art. 48, AG approval 8-6-2019]**

SHED — An accessory structure for storage purposes, not designed to be served by heat or plumbing and not to be used for habitation.**[Added 4-2-2013 ATM by Art. 30, AG approval 7-26-2013]**

SHOREFRONT LAND — A parcel or parcels of land, a portion of which is located within or abutting the mean high water line of the Atlantic Ocean, Nantucket Sound, Nantucket Harbor, Polpis Harbor, or Madaket Harbor.[19]**[Added 4-13-1998 ATM by Art. 35, AG approval 7-31-1998]**

SOLAR ENERGY FACILITIES — All of the equipment, machinery, and structures used for either the primary or accessory purpose of converting, storing or transmitting electricity generated from solar energy.**[Added 4-1-2019 ATM by Art. 62, AG approval 8-6-2019]**

SOLID WASTE — Discarded solid material with insufficient liquid content to be free flowing, including but not limited to rubbish, garbage, scrap material, junk, refuse and inert fill material.

SPECIAL PERMIT GRANTING AUTHORITY — The Board of Appeals except in those matters for which the Planning Board is specified as having jurisdiction under this chapter.

STABLE, PRIVATE — An accessory building in which horses are kept for private use, not for a fee, hire or sale.

STABLE, PUBLIC — An accessory building in which any horses are kept for a fee, hire or sale.

STORAGE CONTAINER — An outdoor container, such as fully enclosed semi-trailers, steel shipping containers, cargo containers, and the like, used for commercial storage of goods and materials that are not registered vehicles themselves or situated on a registered trailer or attached to a registered vehicle. This definition does not apply to registered or unregistered boat trailers, registered vehicles or sheds.**[Added 11-6-2017 STM by Art. 21, AG approval 2-26-2018]**

STREET —

(1) A public way or a way which the Town Clerk certifies is maintained and used as a public way; or

(2) A way shown on a plan approved and endorsed by the Nantucket Planning Board in accordance with the Massachusetts Subdivision Control Law[20] and which has been improved and constructed in accordance with the requirements of such approval; or

(3) A way in legal and physical existence when the Subdivision Control Law[21] became effective on Nantucket on February 1, 1955, which has sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon and served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. **[Amended 5-5-1992 ATM by Art. 44, AG approval 8-3-1992; 11-6-2017 STM by Art. 18, AG approval 2-26-2018]**

STREET LINE — The line separating a street from a lot as duly determined by matters of record.

STRUCTURE — Anything constructed or erected, the use of which requires a fixed location on the

19. **Editor's Note: The former definition of "sign," which immediately followed this definition, was repealed 4-6-2011 ATM by Art. 64, AG approval 9-15-2011.**

20. **Editor's Note: See MGL c. 41, § 81K et seq.**

21. **Editor's Note: See MGL c. 41 § 81K et seq.**

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ground. "Structure" shall be construed, where the context allows, as though followed by the words "or part thereof" and shall include, but not be limited to, buildings, retaining walls which support buildings, platforms, antenna towers, steel storage containers, lighthouses, docks, decks, chimneys, tents, and game courts. "Structure" shall not include retaining walls not exceeding four feet in height for landscaping purposes, fences, rubbish bins, underground propane tanks, stairs, access ramps, or platforms that provide the minimum Building Code compliant access to a structure and that extend into the required front, side, or rear yard setback less than a depth of three feet, and within a total area less than 20 square feet on a lot containing less than 40,000 square feet, and a maximum of two aboveground propane tanks not to exceed 120 gallons each.**[Amended 4-8-2008 ATM by Art. 63, AG approval 8-18-2008; 4-4-2011 ATM by Art. 58, AG approval 9-15-2011; 11-6-2017 STM by Art. 18, AG approval 2-26-2018; 4-1-2019 ATM by Art. 57, AG approval 8-6-2019]**

STUDIO — A building or a room or rooms where an artist, artisan, photographer or the like does his or her work.

SUPERMARKET — Stores where most of the floor area is devoted to the sale of food products for home preparation and consumption, which typically also offer other home and personal care products, and which are substantially larger and carry a broader range of merchandise than convenience stores or pharmacies.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

SWIMMING POOL - COMMERCIAL — A structure designed to be used for recreational purposes, either above or below grade, containing water more than 24 inches in depth and exceeding150 square feet of water surface area, or exceeding 1,000 gallons. This shall not include ornamental ponds, decorative water features, including, but not limited to, fountains, bird baths, and the like. The swimming pool may be a primary use or accessory use to a club, recreational facility, transient residential facility, yacht/sailing club, or other commercial use as identified in § 139-7A.[22]**[Added 4-4-2011 ATM by Art. 58, AG approval 9-15-2011]**

TAKE-OUT FOOD ESTABLISHMENT — A commercial establishment, including a food truck, the primary business of which is the sale of food and/or beverages, including but not limited to ice cream, sandwiches, pastries, prepared meals for consumption on or off the premises which is: **[Amended 4-12-1999 ATM by Art. 31, AG approval 8-10-1999; 5-2-2022 ATM by Art. 53, AG approval 10-31-2022]**

(1) Primarily intended for immediate consumption rather than for use as an ingredient or component of meals;

(2) Available upon a short waiting time; and

(3) Packaged or presented in such a manner that it can be readily consumed outside the premises where it is sold.

TAKE-OUT STATION — A designated area within a take-out food establishment where a cash register or other means of taking and processing orders is located.**[Added 3-31-2012 ATM by Art. 56, AG approval 7-12-2012]**

TAXICAB BUSINESS — A service that offers transportation utilizing three or more motor vehicles to persons, including those who are handicapped, in return for remuneration.**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

TENT — A portable enclosure constructed of fabric, plastic, or a similar pliable material supported

22. **Editor's Note: The former definition of "swimming pool - residential," as amended, which immediately followed this definition, was repealed 5-6-2023ATM by Art. 39, AG approval 9-8-2023. See now "residential recreational outdoor water feature," above.**

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by one or more poles and secured by pegs in the ground. Tents shall not be erected for periods exceeding 30 days per calendar year unless a special permit has been issued by the Planning Board; however, tents which in the aggregate exceed 150 square feet shall not be erected for more than three events per year or periods exceeding nine days per year, whichever is less, on properties where the principal use is residential unless a special permit from the Board of Appeals has been issued based on a determination that the use is ancillary to the residential use of the property and not a commercial use.**[Added 4-6-2009 ATM by Art. 27, AG approval 8-10-2009; amended 5-2-2022 ATM by Art. 53, AG approval 10-31-2022]**

TERTIARY DWELLING**[Added 4-6-2015 ATM by Art. 62, AG approval 8-5-2015; amended 4-2-2016 ATM by Art. 51, AG approval 7-12-2016]** —

(1) The tertiary dwelling shall be in the same ownership as at least one other owner-occupied dwelling unit on the lot, or shall be owned by a not-for-profit, religious, or educational entity, or shall be subject to a restriction limiting occupancy to a year-round household.

(2) A third dwelling unit located on a lot, including the following options: **[Amended 4-1-2019 ATM by Art. 49, AG approval 8-6-2019; 5-2-2022 ATM by Art. 50, AG approval 10-31-2022]**

(a) A garage apartment not exceeding 900 square feet of gross floor area.

(b) A dwelling unit attached to or within a single-family dwelling, duplex, or an outbuilding or a dwelling unit attached to a studio or shed. When a tertiary dwelling unit is the third dwelling unit, within a single structure, a special permit issued by the Planning Board is required. The ground cover of the existing building shall not increase more than 900 square feet and the dwelling unit shall not contain more than 900 square feet of gross floor area.

(c) A detached building containing not more than 650 square feet of ground cover and not more than 900 square feet of gross floor area.

(3) In the R-5, R-10, and R-20 Districts, a maximum of eight bedrooms per lot shall be permitted at the following density:

(a) R-5: 1 bedroom per each 1,000 square feet of lot area;

(b) R-10: 1 bedroom per each 1,400 square feet of lot area;

(c) R-20: 1 bedroom per each 2,500 square feet of lot area;

(4) Any waivers from the standards contained within Subsection (2) or (3) of this definition may be granted through the issuance of a special permit by the Planning Board.

(5) The Planning Board shall make a determination regarding the adequacy of access to the lot and structures prior to the issuance of a building permit. Planning Board approvals shall be valid for a period of two years from the date of plan endorsement.

TERTIARY LOT — A lot created by the division of the original lot into three lots pursuant to § 139-8C. The tertiary lot, in addition to one of the secondary lots, shall be subject to an NHNC-Ownership Form, or shall be owner-occupied by a qualified family member, in which case the lot shall be subject to the NHNC-Ownership Form, except for the established income and asset limits, or shall be subject to a qualified family member deed restriction.**[Added 5-2-2022 ATM by Art. 51,AG approval 10-31-2022]**

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TIME-SHARING OR TIME-INTERVAL-OWNERSHIP DWELLING UNIT OR DWELLING — A dwelling unit or dwelling in which the exclusive right of use, possession or ownership circulates among various owners or lessees thereof in accordance with a fixed or floating time schedule on a periodically recurring basis, whether such use, possession or occupancy is subject to either: a time-share estate, in which the ownership or leasehold estate in property is devoted to a time-share fee (tenants in common, time-share ownership, interval ownership) and a time-share lease; or time-share use, including any contractual right of exclusive occupancy which does not fall within the definition of "time-share estate," including, but not limited to, a vacation license, prepaid hotel reservation, club membership, limited partnership or vacation bond, the use being inherently transient.

TINY HOUSE UNIT — A detached structure containing a dwelling unit with less than a total of 500 square feet constructed on a moveable trailer to be attached to a foundation pursuant to a building permit issued in accordance with Zoning Bylaw § 139-26. Only one tiny house unit shall be allowed per lot. The tiny house unit shall not be a recreational vehicle (commonly known as an RV), auto home, shipping container, motor vehicle, semi-trailer, camper, or boat, and shall not be located upon a lot with a commercial or other nonresidential use. The tiny house unit shall be owned by a not-for-profit, religious, or educational entity or shall be the primary residence of a person(s), or the individual beneficiary(ies) of a legal entity, that holds title, common title, or land lease to the property, or any direct family member of that person(s) (their child, parent, grandparent, or brother or sister, or their spouse's child, parent, grandparent, brother or sister). A tiny house unit may be a primary dwelling unit or may be located on a lot in lieu of an otherwise permitted secondary dwelling, garage apartment, or tertiary dwelling. If located on a lot with a primary dwelling, secondary dwelling, or garage apartment, the Planning Board shall make a determination regarding the adequacy of access to the lot and structures prior to the issuance of a building permit. Planning Board approvals shall be valid for a period of two years from the date of plan endorsement.**[Added 4-2-2016 ATM by Art. 52, AG approval 7-12-2016]**

TOWN OVERLAY DISTRICT — The overlay district described in § 139-12E. **[Added 4-9-2002 ATM by Art. 37, AG approval 7-31-2002]**

TRANSFER STATION — A handling facility where solid waste is brought, stored and transferred from one vehicle or container to another vehicle or container for transport off-site to a solid waste treatment, processing or disposal facility.**[Added 4-8-2008 ATM by Art. 62, AG approval 8-18-2008]**

TRANSIENT RESIDENTIAL FACILITIES — Hotels; rooming, lodging or guest houses; and time-sharing or time-interval-ownership dwelling unit(s). In the ROH District only, rooming, lodging, and guest houses may be allowed by special permit for lots located entirely within a quarter-mile radius of the CDT District.**[Amended 4-6-2009 ATM by Art. 47, AG approval 8-10-2009; 4-6-2015 ATM by Art. 44, AG approval 8-5-2015]**

TRUCK/BUS TERMINAL — A facility for the receipt, transfer, short-term storage, or dispatching of goods transported by truck or the storage, service, or maintenance of buses not in active transport of passengers. Included in the use type would be express and other mail and package distribution facilities, including such facilities operated by the U.S. Post Office.[23]**[Added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008]**

UNENCLOSED PORCH — An unenclosed appendage, whether roof covered or not, projecting from an exterior wall(s) of a structure. An unenclosed porch may connect portions of a single building, roof, or two or more buildings.**[Added 11-6-2017 STM by Art. 18, AG approval 2-26-2018]**

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23. Editor's Note: The former definition of "used," which immediately followed this definition, was repealed 4-6-2015 ATM by Art. 64, AG approval 8-5-2015.

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USE, PRINCIPAL — A use which is expressly permitted by this chapter (other than as an accessory use), either with a special permit or without need of one.

WATER-DEPENDENT USE — Uses and facilities that require direct access to or location in coastal waters and which therefore cannot be located inland, including uses that provide general public access to those waters.**[Added 4-8-2008 ATM by Art. 49, AG approval 8-18-2008]**

WIND ENERGY CONVERSION SYSTEMS (WECS) — Mechanisms, including all appurtenances thereto, designed or operated for the purpose of converting wind energy to electrical or mechanical power.

WINDMILL — A mill operated by the wind's rotation of large, oblique sails or vanes radiating from a shaft, used as a source of power.

WORKFORCE HOMEOWNERSHIP HOUSING — Ownership or rental of single-family dwelling units, pursuant to § 139-8D, where at least 25% of the total dwelling units are restricted to occupancy by households earning at or below the percentages of area median income set forth herein. An increment of 75% of the total 25% of the restricted units shall be restricted to occupancy by households earning at or below 80% of area median income. The remaining increment of 25% of the total 25% of the restricted units shall be restricted to occupancy by households earning at or below 175% of area median income.**[Added 11-9-2015 STM by Art. 2, AG approval 12-29-2015]**

WORKFORCE RENTAL HOUSING — Rental of multifamily dwelling units, pursuant to § 139-8D, where at least 25% of the total dwelling units are restricted to occupancy by households earning at or below 80% of area median income.**[Added 11-9-2015 STM by Art. 2, AG approval 12-29-2015]**

YARD — The area of a lot to be kept free of buildings and other structures (except fences, fence gates, landscape retaining walls, mail and lamp posts, utility service poles, and pedestals, lot accessways, and docks, bulkheads, groins and other coastal engineering structures). The setback distance from any required front, side, or rear yard shall be measured from the corner board of the structure, if applicable, or the closest point (excluding the eaves and any exterior insulation) between the structure and the lot line.**[Amended 4-2-2016 ATM by Art. 60, AG approval 7-12-2016; 4-1-2019 ATM by Art. 49, AG approval 8-6-2019]**

YARD, FRONT — The yard extending from the street line of a lot inwardly the required front-yard setback distance. For lots abutting two or more streets or ways, whether constructed or not, the required front yard setback shall be maintained from one street or way, and the required side yard setback shall be maintained from each other lot line, except in the R-1 and RC-2 Districts, where a minimum ten-foot side yard setback shall be maintained from any other street or way, whether constructed or not. For lots abutting one street or way, whether constructed or not, on more than one side or portion thereof, the Planning Board may grant a waiver by special permit to allow the required side yard or rear yard setback to be maintained from such portion of the lot as the Planning Board determines to be consistent with the purpose of this definition.**[Amended 11-13-1990 STM by Art. 22, AG approval 3-19-1991; 5-5-1992 ATM by Art. 45, AG approval 8-3-1992; 4-1-2019 ATM by Art. 59, AG approval 8-6-2019]**

YARD, REAR or SIDE — The portion of any lot lying between the buildings upon such lot and each lot line other than a line adjoining a street.

ZONE II — The area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated. For the purposes of this chapter, the Zone II is coterminous with the Public Wellhead Recharge District established under § 139-12B of this chapter. **[Added 4-14-1997 ATM by Art. 48, AG approval 8-18-1997]**

ZONING ENFORCEMENT OFFICER — An official of the Town of Nantucket who is responsible

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for the administration and enforcement of the Nantucket Zoning Bylaw in accordance with the provisions of MGL c. 40A, § 7. **[Added 4-10-2000 ATM by Art. 46, AG approval 8-2-2000]**

B. Word usage. "Shall" is considered mandatory and not discretionary.

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ARTICLE II
Establishment of Districts

§ 139-3. Districts enumerated. [Amended 4-10-2000 ATM by Arts. 27, 33, 39, AG approval 8-2-2000;4-9-2001 ATM by Arts. 37, 38, AG approval 8-2-2001; 4-9-2002 ATM by Art. 37, AG approval 7-31-2002; 4-15-2003 ATM by Art. 31, AG approval 8-27-2003; 4-12-2004 ATM by Art. 25, AG approval 9-3-2004; 4-4-2006 ATM by Art. 42, AG approval 10-26-2006; 10-23-2006 STM by Art. 2, AG approval 3-21-2007; 4-8-2008 ATM by Art. 49, AG approval 8-18-2008; 4-8-2008 ATM by Art. 55, AG approval 8-18-2008; 4-8-2008 ATM by Art. 64, AG approval 8-18-2008]

For the purpose of this chapter, the Town of Nantucket (the "Town") is hereby divided into the following districts:

A. Town Overlay District Residential. **[Amended 4-6-2015 ATM by Art. 47, AG approval 8-5-2015]**

District	Abbreviation
Residential Old Historic	ROH
Residential-1	R-1
Residential-5	R-5
Residential-5 Limited	R-5L
Residential-10	R-10
Residential-10 Limited	R-10L
Residential-20	R-20
Residential 40	R-40

B. Country Overlay District Residential.

District	Abbreviation
Sconset Old Historic	SOH
Sconset Residential-1	SR-1
Sconset Residential-10	SR-10
Sconset Residential-2	SR-20
Village Residential	VR
Limited Use General 1	LUG-1
Limited Use General 2	LUG-2
Limited Use General 3	LUG-3

C. Town Overlay District Commercial. **[Amended 11-6-2017 STM by Art. 19, AG approval 2-26-2018]**

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District	Abbreviation
Residential Commercial	RC
Residential Commercial 2	RC-2
Commercial Downtown	CDT
Commercial-Mid-Island	CMI*
Commercial-Neighborhood	CN*
Commercial Trade, Entrepreneurship and Craft	CTEC*
Commercial Industrial	CI*

D. Country Overlay District Commercial.

District	Abbreviation
Village Neighborhood	VN
Village Trade, Entrepreneurship and Craft	VTEC

E. Special districts. **[Amended 4-6-2015 ATM by Art. 64, AG approval 8-5-2015]**

District	Abbreviation
Moorlands Management	MMD
Special Our Island Home	OIH
Assisted/Independent Living Community District	ALC

F. Overlay districts. **[Amended 4-2-2013 ATM by Art. 30, AG approval 7-26-2013; 4-6-2015 ATM by Art. 70, AG approval 8-5-2015; 4-1-2019 ATM by Art. 62, AG approval 8-6-2019]**

District	Abbreviation
Public Wellhead Recharge	PWR
Flood Hazard	FHD
Mid-Island Planned	MIPOD
Country	COD
Town	TOD
Formula Business Exclusion	FBED
Harbor	HOD
Village Height	VHOD
Nantucket Cottage Hospital Overlay District	NCHOD
Solar Energy Overlay District	SEOD

§ 139-4. Location of districts; zoning district maps.[24]

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A. Said districts are to be located and bounded as shown on a map entitled "Zoning Map of Nantucket, Massachusetts," prepared by the Nantucket G.I.S. Department, dated March 26, 2004 as duly amended (the "Zoning Map"), which incorporates the original map dated February 24, 1972, as amended through the Annual Town Meeting of April 2003, on file in the office of the Town Clerk. The Zoning Map, with all explanatory matter thereon, is made a part of this chapter. **[Amended 4-12-2004 ATM by Art. 24, AG approval 9-3-2004]**

B. The Flood Hazard Overlay District (FHOD) includes all special flood hazard areas within the Town of Nantucket designated as Zone A, AE, or VE on the Nantucket County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Nantucket County FIRM that are wholly, or partially within the Town of Nantucket are panel numbers 25019C0018G, 25019C0019G, 25019C0033G, 25019C0034G, 25019C0042G, 25019C0061G, 25019C0062G, 25019C0063G, 25019C0064G, 25019C0066G, 25019C0067G, 25019C0068G, 25019C0069G, 25019C0082G, 25019C0083G, 25019C0084G, 25019C0086G, 25019C0087G, 25019C0088G, 25019C0089G, 25019C0091G, 25019C0092G, 25019C0093G, 25019C0094G, 25019C0103G, 25019C0111G, 25019C0112G, 25019C0113G, 25019C0114G, 25019C0132G, 25019C0151G, 25019C0152G, 25019C0156G, 25019C0157G, 25019C0176G, and 25019C0177G, dated June 9, 2014. The exact boundaries of the FHOD may be defined by the one-hundred-year base flood elevations shown on the FIRM and further defined by the Nantucket County Flood Insurance Study (FIS) booklet dated June 9, 2014. The FIRM and FIS booklet are incorporated herein by reference and are on file with the offices of Planning and Land Use Services and Conservation Commission. **[Amended 4-14-1997 ATM by Art. 41, AG approval 9-4-1997; 4-5-2014 ATM by Art. 35, AG approval 5-7-2014]**

C. The Public Wellhead Recharge District is located and bounded as shown on the following maps incorporated by reference herein: for Siasconset, a map entitled "Public Wellhead Recharge District: Siasconset," prepared by Horsely, Witten & Heggemann, Inc. dated October, 1990; for the Town, a map entitled "Public Wellhead Recharge District: Town," prepared by Haley & Ward, September, 2011. The districts shown on said maps shall be considered overlay districts to be superimposed on the aforementioned Zoning Map of Nantucket, Massachusetts. Copies of the map shall be on file with the Town Clerk and the Building Inspector upon adoption. **[Amended 11-13-1990 STM by Art. 17, AG approval 3-19-1991; 4-14-1997 ATM by Art. 48, AG approval 8-18-1997; 4-10-2000 ATM by Art. 33, AG approval 8-2-2000; 10-10-2001 STM by Art. 5, AG approval 1-24-2002; 4-10-2002 ATM by Art. 44, AG approval 7-31-2002; 4-2-2013 ATM by Art. 30, AG approval 7-26-2013; 4-5-2014 ATM by Art. 68, AG approval 5-7-2014]**

D. Except where different provisions for the SOH, SR-1, R-5L, R-10L, SR-10, or SR-20 Zoning Districts are expressly set forth within this chapter, all provisions relating to the ROH District shall also apply to the SOH District; all provisions relating to the R-1 District shall also apply to the SR-1 District; all provisions relating to the R-5 District shall also apply to the R-5L District, all provisions relating to the R-10 District shall also apply to the R-10L and SR-10 Districts, and all provisions relating to the R-20 District shall also apply to the SR-20 District. **[Added 4-10-2000 ATM by Art. 39, AG approval 8-2-2000, 2-17-2005; amended 4-6-2015 ATM by Art. 47, AG approval 8-5-2015]**

E. The Town Overlay District (§ 139-12E) and Country Overlay District (§ 139-12F) are shown on a map entitled "Town and Country Designations" as may be amended from time to time.[25] **[Added**

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24. Editor's Note: A copy of the Zoning Map is on file in the Town offices.

25. Editor's Note: Former Subsection F, regarding the Dormitory Overlay District, added 4-9-2001 ATM by Art. 38, AG approval 8-2-2001, which immediately followed this subsection, was repealed 4-10-2008 ATM by Art. 55, AG approval 8-18-2008.

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4-9-2001 ATM by Art. 37, AG approval 8-2-2001; amended 4-8-2008 ATM by Art. 56, AG approval 8-18-2008; 4-2-2013 ATM by Art. 30, AG approval 7-26-2013]

F. The Village Height Overlay District (VHOD) is shown on a map entitled "2009 Special Town Meeting Warrant Article 20, Zoning Change, Madaket, 41-81D Master Plan, Planning Area 1" dated July 2009. **[Added 9-21-2009 STM by Art. 22, AG approval 12-29-2009]**

G. The Nantucket Cottage Hospital Overlay District (§ 139-12J) is shown on a map entitled "Nantucket Cottage Hospital Overlay District" as may be amended from time to time. **[Added 4-6-2015 ATM by Art. 70, AG approval 8-5-2015]**

H. The Harbor Overlay District (§ 139-12I) is shown on a map entitled "Harbor Overlay District," as may be amended from time to time. **[Added 4-1-2017 ATM by Art. 40, AG approval 5-31-2017]**

I. The Solar Energy Overlay District is shown on a map entitled "Solar Energy Overlay, District," as may be amended from time to time.[26] **[Added 4-1-2019 ATM by Art. 62, AG approval 8-6-2019]**

§ 139-5. Determination of boundaries.

A. Where the boundary lines are shown upon the map within the lines of public or private ways, railroad rights-of-way or streams, the center lines thereof shall be the boundary lines.

B. Boundary lines located outside the lines of ways and shown approximately parallel thereto shall be regarded as parallel thereto. Dimensions shown in figures placed upon the map between the boundary lines from the lines of ways shall be measured at right angles to the lines of ways unless otherwise indicated.

C. Boundaries which appear to follow property lines shall coincide with such property lines.

D. In all cases which are not covered by other provisions of this section, the location of boundary lines shall be determined by the distance in feet, if given, from other lines or points on the map, by the use of identifications as shown on the map or by the scale of the map.

E. When a boundary line between zoning districts divides a lot in single ownership, the use of the land and dimensional requirements controlling the less restricted portions of such lot shall be applicable to the entire lot, provided that such lot does not extend more than 30 feet into the more restricted district. Such extension shall be a line parallel to the district boundary line located a distance of 30 feet from the district boundary line in the direction of the more restrictive zone.

F. When a boundary line between zoning districts divides a lot in single ownership and the line does not fall within 30 feet of a lot line, each portion of the lot shall be governed by the use and yard setback requirements of the zoning district in which it is located. Ground cover shall be applied to the entire lot and shall be the combined total of the ground cover allowed for the portion of the lot in each zoning district in which it is located. **[Amended 11-6-2017 STM by Art. 19, AG approval 2-26-2018]**

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26. Editor's Note: Said map is on file in the Town offices.

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ARTICLE III
Use and Intensity Regulations

§ 139-6. General district regulations; interpretation.

A. No building or structure shall be constructed or erected and no building, structure or land, or part thereof, shall be used for any purpose or in any manner other than for one or more of the uses hereinafter set forth as permitted in the district in which such building, structure or land is located, or set forth as permissible by special permit in said district and so authorized.

B. All uses which are exempted from zoning regulation by the State Zoning Act, MGL c. 40A, § 3, as amended, shall to the same, but to no greater, extent be exempted from this chapter.

C. This chapter shall be interpreted and construed so as to be in conformity with applicable state legislation and specifically the State Zoning Act, MGL c. 40A.

§ 139-7. Use chart; prohibited uses in all districts. [Amended 11-13-1990 STM by Art. 13, AG approval 3-19-1991; 5-5-1992 ATM by Arts. 37 and 51, AG approval 8-3-1992; 4-12-1994 ATM by Art. 53, AG approval 4-29-1994; 4-8-1996 ATM by Arts. 34, 35, and 36, AG approval 7-15-1996; 4-12-1999 ATM by Art. 33, AG approval 8-10-1999; 4-10-2000 ATM by Arts. 27 and 44, AG approval 8-2-2000; 1-8-2001 STM by Art. 5, AG approval 4-10-2001; 4-9-2001 ATM by Arts. 36, 37 and 38, AG approval 8-2-2001; 4-15-2003 ATM by Arts. 30, 31 and 49, AG approval 8-27-2003; 4-4-2006 ATM by Art. 45, AG approval 8-2-2006; 4-11-2007 ATM by Art. 39, AG approval 6-28-2007; 4-8-2008 ATM by Art. 64, AG approval 8-18-2008; 4-6-2009 ATM by Art. 27, AG approval 8-10-2009]

A. Use Chart.[27]

B. Prohibited uses in all districts. Notwithstanding any other provisions of this chapter, the following uses shall be prohibited in all districts:

(1) More than two dwellings or dwelling units per lot except as otherwise allowed in this chapter.

(2) Use of a trailer or a building-like container for residential purposes or as a principal or accessory building or structure except for "tiny house units" or as necessary for storage of chemicals and/or equipment by the Nantucket Fire Department. **[Amended 4-2-2016 ATM by Art. 52, AG approval 7-12-2016]**

(3) Use of a trailer or building-like containers as a temporary office or for construction materials storage (permitted only when incidental and accessory to construction actively underway on the same lot) longer than 12 months total.

(4) Any building or structure or any use of any building, structure or premises which is injurious, obnoxious, offensive, dangerous or a nuisance to the community or to the neighborhood through noise vibration, concussion, odors, fumes, smoke, gases, dust, harmful fluids or substances, danger of fire or explosion or other objectionable feature detrimental to the community or neighborhood health, safety, convenience, morals or welfare.

(5) Not more than one motor vehicle which is and for the immediately preceding thirty-day period has been unregistered disabled, dismantled or inoperative shall be stored on any lot unless such

27. Editor's Note: The Use Chart is included as an attachment to this chapter.

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vehicle is enclosed within a building. **[Amended 4-2-2016 ATM by Art. 59, AG approval 7-12-2016]**

(6) The taking off or landing of airplanes, helicopters and any other kind of aircraft as a principal or accessory use shall be prohibited. Landings shall be exempt from this prohibition at the Nantucket Memorial Airport, at the designated landing area at the Nantucket Cottage Hospital, in cases of emergency, or as directed by federal, state or local government officials or their authorized agents in the exercise of governmental responsibilities. **[Added 4-1-2017 ATM by Art. 71, AG approval 7-25-2017]**

(7) Medical marijuana treatment centers and recreational marijuana establishments shall be prohibited as an accessory use in all zoning districts. **[Added 11-6-2017 STM by Art. 2, AG approval 2-26-2018]**

§ 139-8. Residential development options. [Amended 11-13-1990 STM by Art. 19, AG approval 3-19-1991; 4-12-1994 ATM by Art. 48, AG approval 4-29-1994; 4-10-1995 ATM by Arts. 42 and 43, AG approval 5-22-1995; 4-9-2001 ATM by Art. 36, AG approval 8-2-2001; 4-15-2003 ATM by Art. 28, AG approval 8-27-2003; 4-12-2004 ATM by Arts. 35 and 36, AG approval 9-3-2004; 4-8-2008 ATM by Arts. 58, 59 and 64, AG approval 8-18-2008; 4-6-2009 ATM by Art. 27, AG approval 8-10-2009[28]; 4-6-2011 ATM by Arts. 63 and 64, AG approval 9-15-2011; 3-31-2012 ATM by Art. 54, AG approval 7-12-2012]

A. Flex development and open space residential development options shall become effective on January 1, 2013, and may be allowed as an alternative to a conventional subdivision. Flex development may be allowed in the Town Overlay District (TOD) through the issuance of a special permit by the Planning Board. Open space residential development is allowed by-right in the Country Overlay District (COD). The primary purposes of these development options are as follows:

(a) To allow for greater flexibility and creativity in the design of residential developments.

(b) To encourage a more efficient form of development that consumes less open land.

(c) To reduce infrastructure and site disturbance through the creation of compact development.

(d) To encourage the permanent preservation of open space.

(1) Requirements.

(a) The following requirements shall apply to flex development and open space residential development:

[1] All plans shall conform to the requirements of MGL c. 41, §§ 81K through 81GG and the "Rules and Regulations Governing the Subdivision of Land," as may be amended by the Planning Board from time to time.

[2] Building lots shall not be subject to the regularity formula in § 139-16D.

[3] Building lots shall be restricted from any further lot division that results in additional building lots.

[4] To ensure that all common open space and common facilities within the development

28. Editor's Note: This enactment also repealed former § 139-8, Residential Districts R-1, R-10, SR-2 and ROH and Residential Commercial Districts RC, RC-2, CDT, CN, CTEC and LC, as amended.

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will be properly maintained, a homeowners' association shall be established in the form of a corporation, nonprofit organization, or trust. The homeowners' association legal documents shall be subject to approval by the Planning Board and shall be filed at the Nantucket County Registry of Deeds or the Registry District of the Land Court.

[5] The maximum number of building lots, excluding any bonuses, shall not exceed the number which may otherwise have been created on a conventional subdivision plan meeting all dimensional and upland requirements of the Zoning Bylaw and in full conformance with (and requiring no waivers from) the "Rules and Regulations Governing the Subdivision of Land," as may be amended by the Planning Board from time to time, as demonstrated by the submission of a dimensioned lotting plan.

(b) Preservation of open space shall be required, with the amount based on the total tract size pursuant to Subsections A(3) and (4) below.

[1] A restriction defining the protection of the open space shall be enforceable by the Town or County of Nantucket and recorded at the Nantucket County Registry of Deeds or the Registry District of the Land Court. In addition, open space shall be:

[a] Owned by the Town of County of Nantucket; or

[b] Owned by the Nantucket Islands Land Bank; or

[c] Conveyed to an established nonprofit organization, a principal purpose of which is the conservation of open land; or

[d] Subject to a permanent conservation restriction, as provided in MGL c. 184, §§ 31 through 33, and owned in common by a corporation or trust composed of the owners of lots within the development. A letter of intent to hold the conservation restriction from the prospective holder shall be required before a final plan is endorsed. **[Amended 4-3-2018 ATM by Art. 49; AG approval 7-18-2018]**

[2] Open space areas included in the minimum calculation required in Subsection A(3) and (4) shall be restricted to one or more of the following uses, subject to approval of the Planning Board, in accordance with MGL c. 184, §§ 31 and 32: **[Amended 4-3-2018 ATM by Art. 49; AG approval 7-18-2018]**

[a] Preservation of important natural features on a lot.

[b] Passive recreation, including, but not limited to, nature study, boating, fishing, hunting, picnicking, and horseback riding.

[c] Active recreation.

[d] Bicycle paths and walking trails.

[e] Agriculture.

[f] Structures accessory to the use of the open space which may include, but are not limited to: boathouses, duck walks, landings, agricultural outbuildings, outbuildings associated with passive recreational use, and gazebos. The following accessory structures are allowed, but their ground cover is prohibited from inclusion in the minimum open space requirement: residential swimming

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pool(s) and/or hot tub(s)/spa(s) and their associated decks and/or patios, outbuildings which are cabanas, clubhouses, fitness studios, and/or offices, and game courts.

[g] Water features (excluding residential swimming pools) consistent with the purposes described above.

[h] Individual underground septic systems or wells that provide service to the lots within the development.

[3] Subject to Subsections A(3) and (4), a maximum of 50% of the required open space may be located on noncontiguous parcels of land in common ownership with the tract to be developed. The Planning Board shall determine the development potential of the noncontiguous parcel(s) and consider the open space value subject to the following criteria:

[a] Preservation of scenic views or vistas.

[b] Common border to existing open space.

[c] Existence of a fragile ecological environment.

[d] Agricultural importance.

[e] Importance to the community for recreation, water supply, cultural or historic municipal use.

[f] Importance to the community as determined by the Planning Board.

(2) Bonus lots.

(a) Flex developments and open space residential developments shall be entitled to bonus lots, subject to the requirements below. Bonus lots shall be based on the number of building lots which could have been created through a conventional subdivision plan, as set forth in § 139-8A(1)(a)[5]. For all density calculations that result in a fractional number, only fractions equal to or greater than 0.51 should be rounded to the next highest whole number.

[1] A 10% increase in the number of building lots that could have been created through the submission of a conventional subdivision plan.

[2] A 10% increase if the open space remains open to the public through a permanent access easement or conveyance to the Town or County of Nantucket or the Nantucket Islands Land Bank.

[3] A 1% increase for each 10% of the cluster lots restricted to a single dwelling unit, provided that the restricted lots would otherwise be permitted a second dwelling pursuant to Board of Health regulations.

[4] The total increase in building lots shall not exceed 30% of the number of building lots which could have been created through a conventional subdivision plan.

(3) Flex development.

(a) Flex development may be allowed in the Town Overlay District (TOD) through the issuance of a special permit subject to the following:

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[1] The Planning Board shall be the sole special permit granting authority for relief pursuant to any provision of this chapter.

[2] Planning Board approval of a special permit shall not substitute for approval of a definitive subdivision or approval not required (ANR) plan.

[3] Flex Development shall be permitted in the R-40, R-20, R-10, R-5, and ROH Districts only and shall conform to the following dimensional requirements:

	R-40	**R-20**	**R-10**	**R-5**	**ROH**
Minimum tract area (acres)	5	3	2	1	1
Open land required (total tract)	70%	50%	40%	30%	25%
Minimum lot size (square feet)	10,000	7,500	4,000	3,000	3,000
Maximum lot ground cover ratio	35%	30%	50%	60%	65%
Minimum frontage	20	20	20	0	0
Front setback	5	5	5	5	0
Side/Rear setback	5	5	5	5	0

[4] The Planning Board may reduce, by up to 100%, the setbacks, provided that the Planning Board finds that such a change will not have an adverse impact on the neighborhood and that it will promote the purposes and intent of this section.

[5] The Planning Board may reduce, by up to 100%, the required frontage, provided that the lot has sufficient access through an easement.

[6] The Planning Board may waive the required minimum tract area, provided that the Planning Board finds that the proposed flex development is more in keeping with the surrounding area, promotes a more efficient use of land, and that it will promote the purposes and intent of this section.

[7] Noncontiguous open space parcels, subject to Subsection A(1)(b)[3], may be located in the Town Overlay District (TOD) or the Country Overlay District (COD).

(b) The following development and design criteria will be considered by the Planning Board during its review of an application for flex development:

[1] Landscaping features utilizing natural or man-made materials are encouraged and may include effective screening, planting of street trees, and preservation of existing mature vegetation.

[2] Sidewalks and walking paths which encourage pedestrian activity are encouraged, including connections to adjacent neighborhoods and bordering open spaces.

[3] Vehicular access should be consolidated in a small number of widely spaced access points where practicable.

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[4] Common driveways and shared parking areas are encouraged.

(c) The following performance criteria shall be reviewed by the Planning Board. Mitigation measures proposed by the developer shall be considered:

[1] Traffic flow and safety in the proposed development, the neighborhood, and adjacent public and private ways will not be significantly impacted in comparison with other development options;

[2] Quality of site design, building design (if applicable), and landscaping enhances the area in comparison with other development options;

[3] The provision of open land and any associated landscaping is appropriate for the scale and location of the development as determined by the Planning Board;

[4] That utilities and services, such as water and sewer, are adequate for the proposed development.

(4) Open space development.

(a) Open space development shall be allowed by-right within the Country Overlay District (COD), subject to the following:

[1] For parcels of land within an open space development, the Planning Board shall be the sole special permit granting authority for relief pursuant to any provision of this chapter.

[2] Open space development shall be permitted in the LUG-1, LUG-2, LUG-3, and VR Districts only and shall conform to the following dimensional requirements:

	LUG-3	LUG-2	LUG-1	VR
Minimum tract area (acres)	10	10	5	3
Open land required (total tract)	80%	75%	65%	60%
Minimum lot size (square feet)	10,000	10,000	10,000	10,000
Maximum lot ground cover ratio	20%	20%	20%	20%
Minimum frontage	20	20	20	20
Front setback	15	15	15	15
Side/Rear setback	10	10	10	10

[3] The Planning Board may issue a special permit to reduce, by up to 100%, the setbacks, provided that the Planning Board finds that such a change will not have an adverse impact on the neighborhood and that it will promote the purposes and intent of this section.

[4] Noncontiguous open space parcels, subject to Subsection A(1)(b)[3], may be located in the Country Overlay District (COD) only.

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[5] In any LUG Zone, a minimum buffer of 50 feet of permanently restricted and undisturbed open space (excluding walking paths and fire access easements) shall be required between the proposed lot line of any open space residential development lot and the outside boundary of the subdivision tract. The Planning Board, through the issuance of a special permit, may reduce or waive this requirement if it finds that:

(b) Such reduction or waiver is necessitated by the shape or topography of the tract of land; or

(c) Natural resources will be better protected by an alternative location; or

(d) Equivalent protection against inconsistency with the existing pattern of development has been provided.

B. Nantucket Housing Needs Program.

(1) Purpose. To create, make available and maintain housing that is affordable to people who earn less than 150% of the Nantucket County median household income; to maintain Nantucket's diversity and unique sense of community; to encourage moderate-income families to continue to reside on Nantucket; and to generate a supply of housing that will remain affordable.

(2) Definitions. The following definitions only apply to this § 139-8C:

HOUSING AUTHORITY — The Nantucket Housing Authority (NHA) or its designee.

MAXIMUM RENTAL PRICE — Shall be no more than the fair market rent established for Nantucket County as published by the U.S. Department of Housing and Urban Development in Federal Register, Vol. 65 No. 185 (September 25, 2000) and as may hereafter be amended from time to time.

MAXIMUM RESALE PRICE — The greater of the maximum sales price or price the current Nantucket Housing Needs Covenant unit owner paid for the Nantucket Housing Needs Covenant unit.

MAXIMUM SALES PRICE — Shall be calculated by assuming a ten-percent down payment and an annual debt service (at prevailing thirty-year fixed interest rates) that is equal to 30% of the gross annual income of a household earning up to 125% of median income.

MEDIAN INCOME — Median family income for Nantucket County as published from time to time by the U.S. Department of Housing and Urban Development.

NANTUCKET HOUSING NEEDS COVENANT — A covenant placed on housing, which property owners choose to execute and which shall be enforceable by the NHA, to be recorded in the Registry of Deeds or the Land Court Registry District.

PRINCIPAL RESIDENCE — The locality where a person resides with the present intent to make it the person's fixed and permanent home. The person's physical presence alone will not establish a principal residence. In ascertaining one's intent, the Housing Authority shall consider, among other things, the person's employment status, voter registration, driver's license, motor vehicle registration, real property ownership, income tax returns, or the filing with the Housing Authority of a written declaration to establish or maintain a principal residence.

QUALIFIED FAMILY MEMBER — The owner of the lot at the time the lot was subdivided into secondary lots and the owner's spouse, and their parents, grandparents, children, brothers and sisters, or as otherwise defined within the Nantucket Housing Needs Program regulations or guidelines.**[Added 4-2-2016 ATM by Art. 55, AG approval 7-12-2016; amended**

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6-5-2021ATM by Art. 47, AG approval 10-7-2021]

QUALIFIED PURCHASER HOUSEHOLD — A household whose gross annual income is less than 150% of median income.

QUALIFIED RENTER HOUSEHOLD — A household whose gross annual income is not more than 100% of median income.

(3) General requirements.

(a) Housing subject to the Nantucket Housing Needs Covenant shall be:

[1] Occupied by a qualified renter or qualified purchaser household.

[2] The principal residence of the qualified renter or qualified purchaser household.

[3] Enforceable for the greater of 99 years or the maximum time period allowable by law.

[4] The price of the unit shall not exceed the maximum sales price, or, in the case of resale, the maximum resale price.

[5] The unit rent shall not exceed the maximum rental price.

[6] The owner of a unit being rented shall provide the Housing Authority with an annual certification of compliance with the terms of the covenant.

(4) Monitoring and administration.

(a) The Housing Authority shall monitor and administer the Nantucket Housing Needs Program and may promulgate rules and regulations to implement it. Prior to promulgating such rules and regulations and prior to completing a model Nantucket Housing Needs Covenant, the Housing Authority shall hold a public hearing or hearings to solicit advice from the public. The Housing Authority shall publish notice of these hearings prominently in a newspaper of general circulation on Nantucket for two successive weeks.

(b) All legal documentation shall be submitted to the Housing Authority for review and approval.

C. Special permit to create secondary residential lots for year-round residents. **[Amended 4-5-2014 ATM by Art. 63, AG approval 5-7-2014; 4-2-2016 ATM by Arts. 54, 55, AG approval 7-12-2016]**

(1) Purpose: to create, make available and maintain housing that is affordable to those who earn at or below 150% of the Nantucket County median household income; to help households to continue to reside on Nantucket; to generate and preserve affordable housing in the Town of Nantucket in perpetuity, all in order to maintain Nantucket's diversity and unique sense of community. **[Amended 4-1-2019 ATM by Art. 48, AG approval 8-6-2019]**

(2) Secondary lots may be permitted in the following zoning districts: ROH, R-5, R-10, R-20, R-40, VR, LUG-1, LUG-2, and LUG-3.

(3) As authorized by MGL c. 40A, § 9, Paragraph 2, the Planning Board, acting as the special permit granting authority, may issue a special permit authorizing the division of a lot into two lots, provided the following requirements and/or conditions shall apply:

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(a) The original lot shall not be subject to any covenants, restrictions or similar encumbrances, whether appearing in a deed, easement, land-use permit or any other instrument, pertaining to the prohibition of more than one dwelling unit on the original lot.

(b) A minimum of one of the two lots shall be subject to an NHNC-Ownership Form, which shall provide, without limitation, that the owner of that lot shall earn at or below 150% of the Nantucket County median household income, or the lot shall be subject to a qualified family member deed restriction. Secondary lots held sold, transferred, or gifted to any qualified family member(s) shall not be subject to the income and asset limits for eligible households. Upon resale, transfer, or gift of the secondary lot to a nonqualified family member, the lot shall be subject to an NHNC-Ownership Form, and all requirements set forth therein, including income and asset limits for eligible households. **[Amended 4-1-2019 ATM by Art. 48, AG approval 8-6-2019; 6-5-2021ATM by Art. 47, AG approval 10-7-2021]**

(c) The lots shall not be subject to the secondary dwelling requirements contained within § 139-2 of this chapter. **[Amended 4-1-2017 ATM by Art. 74, AG approval 5-31-2017;]**

(d) A second dwelling unit, subject to the requirements of the tertiary dwelling definition contained within § 139-2 of this chapter, may be permitted on the market-rate lot only. The Planning Board may waive this requirement by the issuance of a special permit, provided that the Board finds that the proposal is in keeping with the character of the surrounding neighborhood **[Added 4-1-2017 ATM by Art. 74, AG approval 5-31-2017; amended 5-2-2022 ATM by Art. 53, AG approval 10-31-2022; 5-6-2023ATM by Art. 42, AG approval 9-8-2023]**

(e) Except for pre-existing nonconforming lots, in which case the Planning Board may issue a special permit defining the lot areas, the lot area for the smaller of the two lots shall be at least 40% of the minimum lot size for the district in which the lot is located, except in the LUG-2 and LUG-3 Districts, where the secondary lot may be reduced to 20,000 square feet.

(f) The lots shall comply with the ground cover ratio, front setback, and side and rear setback requirements of the underlying zoning district, including any provisions of this chapter for pre-existing nonconforming lots, except as follows:

[1] The Planning Board may waive by the issuance of a special permit the setback requirements only as they apply to the lot line(s) between the secondary lots;

[2] The Planning Board may waive by the issuance of a special permit the ground cover ratio requirement for the secondary lots, provided that the total ground cover ratio does not exceed the amount that would have been allowed for the original lot. The ground cover distribution must be determined at the time of the issuance of a special permit. **[Amended 5-6-2023ATM by Art. 42, AG approval 9-8-2023]**

(g) The lots each must have a minimum of 20 feet of frontage or an easement of sufficient width and grade to provide access.

(h) The lots shall share a single driveway access. The Planning Board must be provided with an instrument, in recordable form, evidencing the common access rights to said access in accordance with this subsection. The Planning Board may grant a special permit to waive

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the requirement for shared driveway access based upon a finding that separate driveway access would not have a significant and adverse effect on the scenic or historic integrity of the neighborhood and is not contrary to sound traffic or safety considerations.

(4) This § 139-8C shall not apply to major commercial developments (§ 139-11); flex development and open space residential development options (§ 139-8A); and are not permitted in the following zoning districts: Commercial Downtown (CDT); Moorlands Management (MMD).

(5) The Planning Board may grant a special permit for the division of a duplex into two attached single-family dwellings, provided that one of the dwellings is subject to a NHNC-Ownership Form. Subsection C(3)(e) and (f) above shall not apply and the Planning Board shall establish minimum lot size, ground cover ratio, and setbacks during the special permit review. Ground cover ratios for the primary and secondary lot combined shall not exceed the maximum allowed in the underlying zoning district.

(6) Section 139-16D, Regularity formula, shall not apply to this § 139-8C.

D. Special permit to create tertiary residential lots for year-round residents. **[Added 5-2-2022 ATM by Art. 51, AG approval 10-31-2022[29]]**

(1) Purpose: to create, make available and maintain housing that is affordable to those who earn at or below 150% of the Nantucket County median household income; to help households to continue to reside on Nantucket; to generate and preserve affordable housing in the Town of Nantucket in perpetuity, all in order to maintain Nantucket's diversity and unique sense of community.

(2) Tertiary lots may be permitted in the following districts: R-10, R-20, R-40, LUG-1, LUG-2, and LUG-3. **[Amended 5-6-2023ATM by Art. 43, AG approval 9-8-2023]**

(3) As authorized by MGL c. 40A, § 9, Paragraph 2, the Planning Board, acting as the special permit granting authority, may issue a special permit authorizing the division of a lot into up to three lots, provided the following requirements and/or conditions shall apply:

(a) The original lot shall not be subject to any covenants, restrictions or similar encumbrances, whether appearing in a deed, easement, land-use permit or any other instrument, pertaining to the prohibition of more than one dwelling unit on the original lot.

(b) The tertiary lot, in addition to one of the secondary lots subject to § 139-8C of this chapter, shall be subject to an NHNC-Ownership Form, which shall provide, without limitation, that the owner of that lot shall earn at or below 150% of the Nantucket County median household income, or the lot shall be subject to a qualified family member deed restriction. Tertiary lots held sold, transferred, or gifted to any qualified family member(s) shall not be subject to the income and asset limits for eligible households. Upon resale, transfer, or gift of the tertiary lot to a nonqualified family member, the lot shall be subject to an NHNC-Ownership Form, and all requirements set forth therein, including income and asset limits for eligible households.

(c) The lot shall not be subject to the tertiary dwelling requirements contained within § 139-2 of this chapter.

(d) The lot area for the tertiary lot shall be a minimum of 20,000 square feet in the R-40,

29. Editor's Note: This bylaw also redesignated former Subsections D and E as Subsections E and F, respectively.

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LUG-1, LUG-2, and LUG-3 districts. This requirement may be waived through the issuance of a special permit by the Planning Board. **[Amended 5-6-2023ATM by Art. 43, AG approval 9-8-2023]**

(e) In the R-10 district, the original lot shall be a minimum of 15,000 square feet, and in the R-20 district, the original lot shall be a minimum of 30,000 square feet. The Planning Board shall determine the minimum lot area for the tertiary lot during their review of the special permit application. **[Added 5-6-2023ATM by Art. 43, AG approval 9-8-2023[30]]**

(f) The lots shall comply with the ground cover ratio, front setback, and side and rear setback requirements of the underlying zoning district, including any provisions of this chapter for pre-existing nonconforming lots, except as follows:

[1] The Planning Board may waive by the issuance of a special permit the setback requirements only as they apply to the lot line(s) between the secondary and tertiary lots;

[2] The Planning Board may waive by the issuance of a special permit the ground cover ratio requirement for the tertiary lot, provided that the total ground cover ratio of the secondary lots and the tertiary lot does not exceed the amount that would have been allowed for the original lot.

(g) The lots each must have a minimum of 20 feet of frontage or an easement of sufficient width and grade to provide access.

(h) The lots shall share a single driveway access. The Planning Board must be provided with an instrument, in recordable form, evidencing the common access rights to said access in accordance with this subsection. The Planning Board may grant a special permit to waive the requirement for shared driveway access based upon a finding that separate driveway access would not have a significant and adverse effect on the scenic or historic integrity of the neighborhood and is not contrary to sound traffic or safety considerations.

(4) This § 139-8C shall not apply to flex development and open space residential development options (§ 139-8A).

(5) (Reserved)

(6) Section 139-16D, Regularity formula, shall not apply to this § 139-8C.

E. Special permit issued by the Planning Board to create workforce homeownership housing in the R-5 Zoning District through a workforce homeownership housing bonus lots allowance and in the CN and CMI Zoning Districts through a workforce rental community. The purpose of this provision is to incentivize the creation of workforce and affordable rental and ownership housing opportunities; to promote consistency, quality, and flexibility in the site layout and design; to mitigate traffic congestion by encouraging the creation of compact neighborhoods proximate to compatible adjacent commercial uses that reduce the need for vehicle trips to already congested areas; and to promote economic vitality and a greater diversity of housing opportunities in compliance with objectives contained within plans adopted or accepted by the Town of Nantucket, Nantucket Planning and Economic Development Commission, or the Nantucket Housing Authority. This bylaw, which sets a minimum size lot area, is intended to allow for aggregation of buildings, parking spaces, and open

30. Editor's Note: This article also redesignated former Subsection D(3)(e) through (g) as Subsection D(3)(f) through (h).

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areas to improve design quality. Consistent design quality shall be applied to all dwelling units, and affordable units shall be distributed evenly throughout the development. **[Added 11-9-2015 STM by Art. 2, AG approval 12-29-2015; amended 4-2-2016 ATM by Art. 36, AG approval 7-12-2016]**

(1) Requirements.

(a) The following requirements shall apply to workforce homeownership housing bonus lots in the R-5 and R-10 Zoning Districts and to a workforce housing rental community in the CN and CMI Zoning Districts. **[Amended 6-25-2020ATM by Art. 70, approved 10-27-2020; 5-2-2022 ATM by Art. 52, AG approval 9-8-2022]**

[1] Minimum lot requirement of 60,000 square feet in the CN District and 32,000 square feet in the CMI District:

[2] The term of affordability shall be in perpetuity or the longest term allowed by law;

[3] The application shall be subject to major site plan review;

[4] The Planning Board shall be the sole special permit granting authority for any relief pursuant to any provision of this chapter;

[5] Planning Board approval of a special permit shall not substitute for approval of a definitive subdivision or approval not required (ANR) plan;

[6] Project must be eligible for approval as local action units (LAU) through the Local Initiative Program (LIP) or otherwise included on the Town's Subsidized Housing Inventory. It shall be the responsibility of the applicant to take all reasonable steps necessary to ensure the units are included, including, without limitation, preparation and execution of a regulatory agreement in a form to be approved by the Town of Nantucket, through its Select Board, and by the Department of Housing and Community Development (DHCD) and provision of any other documents requested by DHCD.

(2) Workforce homeownership housing bonus lots.

(a) Bonus lots, subject to the requirements below, shall be based on the number of building lots which could have been created through a conventional subdivision plan. The maximum number of building lots, excluding any bonuses, shall not exceed the number which may have otherwise been created on a conventional subdivision plan meeting all dimensional and upland requirements of the Zoning Bylaw and in full conformance with (and requiring no waivers from) the Rules and Regulations Governing the Subdivision of Land, as may be amended by the Planning Board from time to time, as demonstrated by the submission of a dimensioned lotting plan. For all density calculations that result in a fractional number, only fractions equal to or greater than 0.51 should be rounded to the next highest whole number.

[1] The total number of lots shall be calculated by multiplying the number of lots allowed by-right, as described above, by a factor of 1.33 in the R-5 District and by a factor of 1.2 in the R-10 District. **[Amended 5-2-2022 ATM by Art. 52, AG approval 9-8-2022]**

[2] 25% of the total number of lots allowed, using the bonus provision, must be allocated and restricted to ownership by households earning at or below the area median

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income limits set forth in the definition of "workforce homeownership housing," as defined in § 139-2, or the rental dwelling units located on the lots achieved through the bonus provision must be restricted to households earning at or below 80% of area median income. Said lots shall be subject to a Nantucket Housing Needs Covenant-Ownership Form or other instrument restricting sale or rental to households earning at or below the area median income limits set forth in the definition of workforce homeownership housing, as defined in § 139-2.

(b) The Planning Board may reduce, by up to 100%: the front yard setback (but not the side or rear yard setbacks applied to the perimeter of the project area), internal side or rear yard setbacks (meaning setbacks between lots which are the subject of the application), side or rear yard setbacks between the lots which are the subject of the application and other land in common ownership or control of the applicant, and the required frontage, provided that the lot has sufficient vehicular access through an easement.

(c) The Planning Board may allow an increase in the ground cover ratio up to 50%.

(d) A minimum buffer area of at least 20 feet shall be established between the workforce homeownership housing bonus lots and residentially zoned abutting properties. The Planning Board may require the buffer area to include plantings, fencing, walls, or other improvements to mitigate impacts to abutting properties.

(3) Workforce rental community.

(a) Rental dwelling units in one or more structures, shall be subject to the following requirements:

[1] The maximum number of dwelling units shall not exceed 32, at least eight of which must (25% of which) be restricted to occupancy by households earning at or below 80% of area median income. An instrument, in a form approved by the Planning Board, restricting rental of at least eight of the dwelling units to households earning at or below 80% of area median income must encumber the subject lot(s);

[2] The maximum number of bedrooms contained within the workforce rental community lot shall not exceed 57;

[3] At least 10% of the total dwelling units within the workforce housing rental community must contain at least three bedrooms, unless such requirement is reduced by a future binding directive from the Commonwealth of Massachusetts Department of Housing and Community Development which confirms that fewer than 10% three-bedroom units may be included in the workforce rental community while still confirming that all of the units in the workforce rental community shall be eligible for inclusion on the Town's Subsidized Housing Inventory. In such an instance, the Planning Board shall have the discretion to approve fewer three-bedroom units within the workforce rental community, in conjunction with the issuance of the special permit, as long as the requirement described above with respect to confirmation of the eligibility of all of the units in the workforce rental community relative to inclusion on the Town's Subsidized Housing Inventory has been met.

(b) A minimum buffer area of at least 20 feet shall be established between the workforce rental community and residentially zoned abutting properties. The Planning Board may require the buffer area to include plantings, fencing, walls, or other improvements to mitigate

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impacts to abutting properties.

(c) The Planning Board may, in addition to those requirements included in § 139-23, require submission of additional documentation, including, without limitation, detailed floor plans, operation and management plan for the project, including maintenance of the structure(s) and the site.

(d) The Planning Board may reduce, by up to 100%, the side and rear yard setbacks where two or more workforce rental community lot projects are adjacent to each other.

(4) The Planning Board may allow a workforce rental community as part of a larger project, as allowed in the CN and CMI Districts, provided that the project, comprised of one or more parcels of land in the same ownership or control, could be divided into multiple lots meeting the lot requirement of § 139-8D(1)(a)[1] on a conventional subdivision plan meeting all dimensional and upland requirements of the bylaw and consistent with the Rules and Regulations Governing the Subdivision of Land, as may be amended by the Planning Board from time to time, as demonstrated by the submission of a dimensioned lotting plan. **[Added 11-6-2017 STM by Art. 20, AG approval 2-26-2018]**

F. Special permit to create rear lot subdivisions. **[Added 4-1-2017 ATM by Art. 72, AG approval 5-31-2017]**

(1) Purpose: to provide a residential infill development option that allows for the same density that could be created by a conventional subdivision, but that does not create unnecessary un-taxed roadway lots.

(2) Rear lots may be permitted in the following zoning districts: R-5, R-10, R-20, R-40, and LUG-1.

(3) As authorized by MGL c. 40A, § 9, Paragraph 2, the Planning Board, acting as the special permit granting authority, may issue a special permit authorizing the division of a lot into two or more lots, provided the following requirements and/or conditions shall apply:

(a) A minimum frontage of 20 feet shall apply to each lot;

(b) The ground cover ratio, front setback, and side and rear setback requirements of the underlying zoning district shall apply to each lot;

(c) The regularity formula prescribed in § 139-16D shall not apply to lots created pursuant to this subsection;

(d) The number of building lots shall not exceed the number which may have otherwise been created on a conventional subdivision plan meeting all dimensional and upland requirements of the Zoning Bylaw and the requirements contained within the "Rules and Regulations Governing the Subdivision of Land," as may be amended from time to time, as demonstrated by the submission of a dimensioned lotting plan, or as shown on an Approval Not Required plan endorsed by the Planning Board, or as shown on an Approval Required plan approved and endorsed by the Planning Board provided that the appeal period has lapsed without appeal. **[Amended 4-1-2019 ATM by Art. 61, AG approval 8-6-2019]**

§ 139-9. (Reserved)[31]

31. **Editor's Note: Former § 139-9, Commercial use table, added 4-8-2008 ATM by Art. 28, AG approval 8-18-2008, was repealed**

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§ 139-10. (Reserved)[32]

§ 139-11. Major Commercial Development MCD. [Amended 11-13-1990 STM by Art. 18, AG approval 3-19-1991; 5-5-1992 ATM by Arts. 36 and 47, AG approval 8-3-1992; 4-14-1997 ATM by Art. 49, AG approval 8-5-1997; 4-13-1998 ATM by Art. 38, AG approval 7-31-1998; 4-9-2001 ATM by Art. 29, AG approval 8-2-2001; 4-15-2003 ATM by Art. 31, AG approval 8-27-2003; 4-30-2003 ATM by Art. 53, AG approval 8-27-2003; 4-30-2003 ATM by Art. 54, AG approval 7-22-2003; 4-4-2006 ATM by Art. 41, AG approval 8-2-2006; 4-8-2008 ATM by Art. 64, AG approval 8-18-2008; 4-2-2016 ATM by Art. 57, AG approval 7-12-2016]

A. The Planning Board shall be the special permit granting authority for any "major commercial development" (or "MCD").

B. A MCD shall be defined as a single commercial structure or use, or a group of commercial structures or uses, which is proposed to be constructed on a single lot or tract of land or on contiguous tracts of land and held in common ownership or control, meeting, in the aggregate, any one or more of the following criteria:

(1) Five thousand square feet of commercial use, including, but not limited to, the total of the following:

(a) Gross floor area of commercial use, including roofed-over storage areas;

(b) Outdoor commercial use, including but not limited to sand, gravel or topsoil borrow operations and asphalt plants; land used commercially for recreation; and land used for the exterior storage or display of merchandise, equipment or material.

(2) Four thousand square feet or more of gross floor area of commercial use, including roofed-over storage areas.

(3) A commercial use requiring 20 or more off-street parking spaces pursuant to § 139-18. A motor vehicle parking lot as defined in § 139-2 which contains 20 or more parking spaces shall not be considered an MCD.

(4) Auditorium, theater or place of public assembly use with a rated legal occupancy of 100 or more persons.

(5) Restaurant, club and/or bar use with a combined rated legal occupancy of 100 or more.

(6) Developments which generate an estimated 10,000 gallons per day of wastewater.

(7) Marinas, wharfs and piers containing 250 lineal feet or more of tie-up space for vessels.

(8) Transient residential facilities with 10 or more guest rooms or units.

C. Preexisting nonconforming uses shall be subject to this subsection when any extended or altered portion of the commercial use(s), added together starting from the effective date (April 4, 1979, as amended), meets or exceeds the criteria of Subsection B above, which defines a MCD.

4-6-2009 ATM by Art. 27, AG approval 8-10-2009. See now the Use Chart included as an attachment to this chapter. Former § 139-9, Residential Commercial Districts RC, RC-2 and RCDT, as amended, was repealed 4-8-2008 ATM by Art. 28, AG approval 8-18-2008.

32. Editor's Note: Former § 139-10, Limited Commercial District LC, as amended, was repealed 4-8-2008 ATM by Art. 28, AG approval 8-18-2008.

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D. Conditions. The Planning Board shall have the right, in granting special permits for major commercial developments, to impose conditions, safeguards and limitations, including, but not limited to, the following requirements:

(1) A landscaping plan, indicating the location, species, and size of trees and shrubs and the location and type of fencing.

(2) An exterior lighting plan indicating the size and type of any proposed fixtures.

(3) The installation of underground utilities.

(4) A plan indicating the type, size and location of all exterior signs.

(5) The days and hours of operation may be limited based on the type of business, the character of the surrounding areas, and the potential impacts to adjacent properties or the surrounding neighborhood.

E. Open area for major commercial developments.

(1) Except for lots located within the CDT District, a minimum of 20% of the lot(s) shall be landscaped and maintained as open area.

(2) Walkways and sidewalks, patios, structures, and areas designated for exterior storage, parking or loading shall not be included in the open area calculation; provided, however, that in computing the percentage of open area, brick or stone sidewalks and patios may be included up to a maximum of 10% of the lot(s).

(3) The Planning Board may grant a special permit to waive the requirement for open area, provided that the Board finds that sufficient and appropriate landscaping will be provided and that the benefits to the community and the neighborhood from the reduction of open area will outweigh the benefits that would be derived from the provision of the open area requirements. The special permit granting authority may impose conditions for the granting of such a special permit, including, but not limited to, the substitution of off-site landscaping elements, a financial or other type of contribution toward the creation of common public space(s), and requirements for the permanent maintenance of landscaping features within the site by the applicant and its successors.

F. Any expansion or reconstruction of, or any changes to, a major commercial development for which a special permit has been granted shall require its modification or issuance of a new special permit by the Planning Board subject to the procedural and substantive requirements of §§ 139-11 and 139-30. However, the Planning Board may, by majority vote, waive the requirements for such modified or new special permit when it finds that the expansion, reconstruction or change proposed does not materially affect the findings and conclusions upon which the Planning Board's previous decision to approve the development was based.

G. The side and rear yard setback requirement be reduced to zero feet, provided that the Planning Board finds that such a reduction will preserve the integrity of adjacent uses and the neighborhood, and will promote the purposes and intent of this chapter.

H. In order to further the availability of housing for persons and households of all income levels, and mitigate the impacts of major commercial developments on the supply and cost of housing, the Planning Board may require applicants to provide inclusionary housing in accordance with the following standards:

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(1) One inclusionary unit for each 4,000 feet of gross floor area of interior commercial use or one inclusionary unit per major commercial development, whichever is greater.

(2) The inclusionary unit(s) may be located on the MCD site or at an off-site location.

(3) (Reserved)

(4) In lieu of providing inclusionary units or employer dormitories as outlined above, an applicant may provide a monetary contribution of equivalent value to the Town of Nantucket, to be placed in a fund for the development of affordable housing administered by the Affordable Housing Trust Fund. The amount of such contribution shall be equivalent to the average sale price of residential property with 5,000 square foot to 10,000 square foot lot sizes in the R-5 district as recorded by the Nantucket Islands Land Bank during the one-year period prior to approval of the special permit. This payment may be used only for the planning, development and administration and maintenance of affordable housing.

(5) Where the inclusionary units are provided on the MCD site, the Planning Board may allow an increase in the number of units that may be permitted within a single structure or upon a single lot beyond that which is permitted in the zoning district in which the units are located.

(6) Inclusionary units shall be subject to a deed restriction, enforceable by the Planning Board or its designee, to be in effect during the thirty-year period which commences from the date of issuance of the certificate of occupancy for the building in which the unit(s) is located.

(7) No certificate of occupancy will be issued for any building within an MCD unless the required inclusionary unit(s) is also eligible for such certificate, or unless the Planning Board has approved its issuance.

I. Cap on retail MCDs.

(1) Except in the following approved area plan location: Mid-Island Planned Overlay District (MIPOD), a special permit shall not be granted for:

(a) A new major commercial development which is devoted primarily to retail use and which has 20,000 square feet or more of gross floor area of commercial use, including roofed-over storage areas.

(b) Expansion of an existing commercial development whenever the expanded portion of the development, added together starting from the effective date of this § 139-11I, is devoted primarily to retail use and has 10,000 square feet or more of gross floor area of commercial use, including roofed-over storage areas.

§ 139-12. Town Overlay District (TOD), Country Overlay District (COD), Formula Business Exclusion Overlay District (FBED), Mid-Island Planned Overlay District (MIPOD), Village Height Overlay District (VHOD), Nantucket Cottage Hospital Overlay District (NCHOD), Public Wellhead Recharge District (PWED), Flood Hazard Overlay District (FHOD), Harbor Overlay District (HOD), Solar Energy Overlay District (SEOD). [Amended 11-13-1990 STM by Art. 17, AG approval 3-19-1991; 5-4-1993 ATM by Art. 44, AG approval 5-24-1993; 4-10-1995 ATM by Art. 45, AG approval; 5-22-1995; 4-14-1997 ATM by Art. 41, AG approval 9-4-1997; 4-14-1997 ATM by Art. 49, AG approval 8-5-1997; 8-18-1997; 9-4-1997; 4-10-2000 ATM by Art. 46, AG approval 8-2-2000; 4-9-2001 ATM by Arts. 37, 38, AG approval 8-2-2001; 4-9-2002 ATM by Art. 37, AG approval 7-31-2002; 4-15-2003 ATM by Arts. 26, 29, AG approval 8-27-2003; 1-12-2004 ATM by Art. 42, AG

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approval 9-3-2004; 4-4-2006 ATM by Art. 42, AG approval 10-26-2006; 4-4-2006 ATM by Arts. 48, 49, AG approval 8-2-2006; 4-8-2008 ATM by Art. 55, AG approval 8-18-2008; 4-6-2009 ATM by Art. 27, AG approval 8-10-2009; 9-21-2009 STM by Art. 22, AG approval 12-29-2009; 3-31-2012 ATM Art. 55, AG approval 7-12-2012; 4-2-2013 ATM by Arts. 30, 34, AG approval 7-26-2013; 4-5-2014 ATM by Arts. 35, 61, AG approval 5-7-2014; 4-6-2015 ATM by Art. 70, AG approval 8-5-2015; 4-1-2017 ATM by Art. 40, AG approval 5-31-2017; 4-1-2019 ATM by Arts. 49, 62, AG approval 8-6-2019; 6-25-2020ATM by Art. 52, AG approval 10-27-2020]

A. There is hereby established in the Town of Nantucket an overlay district entitled “Town Overlay District” as follows:

(1) (Reserved)

(2) The purpose of the Town Overlay District is to limit the spatial extent of growth within a district consistent with the traditional settlement pattern represented by the settled portion of Nantucket Town, except in the Residential Old Historic (ROH) District; to encourage development within the Town Overlay District where infrastructure already exists, or can be extended without undue expense; to create opportunities to produce housing affordable for year-round residents through infill development (development of existing vacant lots; lots produced by resubdivision; and addition of secondary dwellings) on existing roads serviced by water and sewer; and to create development patterns that are conducive to service by alternatives to the automobile, such as transit, and bicycle and pedestrian systems. The purpose of the Town Overlay District shall be considered by the Planning Board or Zoning Board of Appeals when determining the character and extent of site and infrastructure improvements to be required in a decision on an application for site plan approval pursuant to § 139-23 of this chapter. In addition to the standards of that section, the following standards shall apply to a proposed use or an expansion of an existing use subject to site plan review:

(a) Provision of Town water and sewer service, which shall be adequate to serve the proposed use;

(b) Road and drainage improvements shall be adequate to serve the proposed use;

(c) Bike and/or pedestrian systems shall be adequate to serve the proposed use, and reasonable measures shall be taken to provide connectivity to existing bike and pedestrian systems;

(d) The project minimizes parking demand and auto-dependency (i.e., by inducements employed by the applicant for the utilization of the NRTA seasonal shuttle system); and

(e) Consistency with the recommendations of any area plan endorsed by Town Meeting, such as the Mid-Island Area Plan, Sconset Area Plan, and Madaket Area Plan.

(3) Uses allowed or permitted in this district are the same as those uses allowed or permitted in the underlying zones.

B. There is hereby established in the Town of Nantucket an overlay district entitled "Country Overlay District" as follows:

(1) (Reserved)

(2) The purpose of the Country Overlay District is to discourage development and preserve areas characterized by traditional and historic rural land use patterns; to discourage the spread of disperse development patterns that promote automobile dependency, and are costly to build and

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maintain. The purpose of the Country Overlay District shall be considered by the Planning Board or Zoning Board of Appeals when determining the character and extent of site and infrastructure improvements to be required in a decision on an application for site plan approval pursuant to § 139-23 of this chapter. In addition to the standards of that section, the following standards shall apply to a proposed use or an expansion of an existing use subject to site plan review:

(a) If a new use, or an expansion of a preexisting use that adds 20% or more of the gross floor area or 1,000 square feet, of gross floor area, whichever is less, either subject to site plan review, a finding that the applicant has considered all practicable alternative sites, commensurate with the type, size, and cost of the project, available within the Town Overlay District and that no such practicable alternative exists;

(b) The project complies with the Nantucket Public Health Code;

(c) The project complies with the standards of § 139-12E(2)(b) through (e); and

(d) Finding that the project is not a major traffic generator, and will not substantially contribute to traffic generation and congestion.

(3) Uses allowed or permitted in this district are the same as those uses allowed or permitted in the underlying zones.

C. Formula Business Exclusion District (FBED).

(1) The Formula Business Exclusion District (FBED) is located and bounded as shown on the map entitled "Article 42: Proposed Formula Business Exclusion District" prepared by the GIS Department, dated March 2006.

(2) Statement of purpose. The purpose and intent of the Formula Business Exclusion District (FBED) is to address the adverse impact of nationwide, standardized businesses on Nantucket's historic downtown area. The proliferation of formula businesses will have a negative impact on the island's economy, historical relevance, and unique character and economic vitality. These uses are therefore prohibited in order to maintain a unique retail and dining experience. Formula businesses frustrate this goal by detracting from the overall historic island experience and threatening its tourist economy.

D. Mid-Island Planned Overlay District. The purpose of the Mid-Island Planned Overlay District (MIPOD) is to advance the following objectives in the Mid-Island Area: 1. to promote consistency and quality in the planning and siting of buildings, uses, and streetscape and public/private improvements; 2. to increase the supply of housing for year-round Nantucket residents, especially those employed in the Mid-Island area; 3. to create a pedestrian-friendly environment; 4. to increase safety to pedestrians, bicyclists, and motorists; 5. to relieve traffic congestion; and, 6. to promote economic vitality; all in accordance with the general guidance of the Mid-Island Area Plan, adopted for the Town of Nantucket by the Planning Board on March 10, 2003, on file in the office of the Nantucket Planning Board. The MIPOD is located and bounded as shown on the following maps adopted by reference herein: “Mid-Island Planned Overlay District,” January, 2003; revised March, 2003. The district as shown on said map shall be considered an overlay district to be superimposed on the Zoning Map of Nantucket, Massachusetts.

(1) Allowed uses:

(a) All uses allowed on the lot by right in the underlying district in which the land is located.

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Notwithstanding the provisions of §§ 139-23H(3) and 139-23I, all new commercial uses or expansions of commercial uses that entail expansions of the building footprint or parking and circulation improvements (excluding handicap ramps and signage), and which are not otherwise subject to major site plan review, shall be subject to minor site plan review by the Director of Planning designated by the Planning Board for site plan review purposes set down in this § 139-12G, and such professional planning staff to whom the Director of Planning shall delegate this responsibility, for all commercial uses and expansions up to, and including, 3,999 square feet of gross commercial floor area (including roofed over area).

(2) Uses by special permit:

(a) All uses permitted on the lot requiring a special permit in the underlying district in which the lot is located.

(3) Additional requirements within the MIPOD:

(a) The Planning Board shall be the sole special permit granting authority within the MIPOD.

(b) In reviewing a use or expansion requiring site plan review within the MIPOD, the Planning Board and/or the Director of Planning or his designee shall make a determination that the proposed use or improvements are generally consistent with site plan review standards contained in § 139-23, and with the standards set down in this § 139-12G.[33] **[Amended 6-5-2021ATM by Art. 47, AG approval 10-7-2021]**

(c) Notwithstanding the ground cover requirements of § 139-16, the allowable ground cover ratio for a lot within the MIPOD for which a Nantucket Housing Needs Covenant, as defined in § 139-2A, has been recorded in the Registry of Deeds shall be 55% for a lot containing one year-round dwelling unit subject to the covenant, and 60% for two or more year-round dwelling units subject to the covenant.

(d) In addition to the intensity requirements of § 139-16A, new or expanded commercial buildings within the MIPOD shall be subject to a five-foot maximum front-yard setback. A second commercial building on the same lot shall be exempt from this requirement should the Planning Board and/or the Director of Planning or his designee determine that there exists insufficient frontage to accommodate both structures at the maximum setback line. The Planning Board may grant relief by special permit from this and other requirements of § 139-16A should the Board find that:

[1] The granting of relief would create better consistency with existing building setback patterns on adjoining lots, provided that the accommodation of parking or vehicular access in front of buildings is not the reason for the waiver request; or

[2] The provision of additional landscaping and streetscape elements, especially if designed to enhance the use and enjoyment of the property and the Mid-Island area, generally, by pedestrians necessitates a greater building setback.

(e) Notwithstanding the relief provisions and findings of § 139-18B(1) and (2), parking calculations, in compliance with § 139-18D shall include: (i) any off-street parking spaces provided upon the subject property; and (ii) parking spaces located within a public right-

33. Editor's Note: So in original.

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of-way within 500 feet of the subject property's lot lines. Any portion of a parking space so located shall be counted as one space; and (iii) parking spaces located on another property located within 500 feet of the subject property lot line secured by a binding agreement such as a license, lease or covenant and accessible through a direct access. By special permit, the Planning Board may reduce the number of parking spaces required under § 139-18D within the MIPOD. An applicant requesting such reductions shall submit a plan outlining the details of implementation of these mitigation measures. The Planning Board may require annual audits of compliance with these measures, and may revoke any approved reductions in the case of noncompliance, following a public hearing. The Planning Board shall consider the following standards in reducing parking requirements: (i) one parking space may be eliminated for each group of three peak shift employees should the applicant provide a public transit incentive program for both employees and customers authorized under § 139-23J(2)(f). (ii) The total number of required parking spaces may be reduced by up to 10% should the applicant utilize any or a combination of the following measures: common access, vehicular traffic and/or pedestrian interconnections between properties. The Planning Board may grant other relief by special permit from any parking requirements of the zoning bylaw.

(f) In considering any use or expansion subject to major site plan review, the Planning Board may require an applicant to install improvements within the public right-of-way along the frontage of the property controlled by the applicant in accordance with the Mid-Island Area Plan. Off-site improvements (i.e., beyond the frontage of the property) may be required for special permit uses to the extent that the demand for the improvements is justified by the intensity of the use. For major traffic generators, these improvements may include bike path, road and intersection improvements.

(g) The Planning Board, as special permit granting authority, shall have the power to grant a special permit reducing the open area requirements under either § 139-11G or § 139-16E, whichever is applicable, and notwithstanding the provisions of § 139-16E(3), provided that it makes the finding that the applicant has provided sufficient and appropriate landscaping, and further provided that it makes the finding that the benefits to the community and the neighborhood from the reduction of open area requirements, as conditioned by the decision granting the special permit, will outweigh the benefits that would be derived from the provision of the open area requirements as would otherwise be required. The Planning Board shall impose appropriate conditions for the granting of such a special permit, including but not limited to the substitution of off-site landscaping elements, the contribution of the applicant toward the creation of common public spaces within the MIPOD, and requirements for the permanent maintenance of landscaping features within the site by the applicant and its successors.

(h) In connection with its review of any major or minor site plan review, the Planning Board, after public hearing, shall adopt MIPOD Guidelines, on file in the offices of the Planning Board and the Town Clerk, which shall serve to guide the siting of structures, layout of parking and landscaping, and related improvements within the MIPOD.

E. Village Height Overlay District (VHOD). The purpose of this overlay district is to establish reduced building heights in certain locations within the Country Overlay District (COD).

(1) Notwithstanding the provisions of § 139-17, the maximum height permitted within the Village Height Overlay District shall be 25 feet;

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(2) This section shall be effective on January 31, 2010.

F. Nantucket Cottage Hospital Overlay District (NCHOD). The purpose of this overlay district is to maximize the efficiency of the existing hospital site and identified surrounding land, to provide for flexibility in the design and uses allowed at an expanded and modernized hospital campus, and to require major site plan review by the Planning Board where proposed expansion or alteration exceeds the maximum standards of the underlying CN District as established in § 139-16. To the extent there are inconsistencies between provisions of this § 139-12J and any other provisions of the bylaw, the provisions of this § 139-12J shall govern.

(1) Notwithstanding the provisions of § 139-7A, elder housing facilities are permitted by right in the NCHOD.

(2) Notwithstanding the provisions of § 139-16A or § 139-16E, the Planning Board may grant through major site plan review expansion of ground cover ratio up to 50% and any reduction of open area.

(3) Where major site plan review is required, dimensional requirements established in § 139-16 may be applied to the entire project area by right without respect to individual lots.

(4) Notwithstanding the provisions of § 139-17, building height in the NCHOD shall not exceed 50 feet. For the purposes of this § 139-12J, the following structures, uses, and building features are excluded from the height limitation: uses set forth in § 139-17B, structures set forth in § 139-17C, and architectural features extended above the primary roof line (whether sloped or vertical).

(5) Lots within the NCHOD may be divided without the need for additional site plan review, provided that the use of the lot and the previously approved site plan is not modified.

(6) Notwithstanding the provisions of § 139-18, off-street parking requirements may be provided off-site within the NCHOD for lots within the NCHOD.

(7) Additional major site plan review requirements for the NCHOD:

(a) The Planning Board shall hold a public hearing, for which notice is provided as specified in M.G.L. c. 40A, § 11;

(b) Failure of the Planning Board to take action within 60 days of the public hearing, as such hearing may be extended by consent of the applicant, shall constitute an approval of the site plan and associated application;

(c) The Planning Board shall approve the application, as submitted or modified, based on a finding that the project is in conformance with § 139-23. The Board may deny the application if it determines that the effect of the project on the public interest is so intrusive that no reasonable conditions can be developed to avoid that effect.

(d) Waivers in connection with major site plan review may be granted, provided that such waiver:

[1] Will improve the project's ability to service the health care needs of the Town;

[2] Is in the best interests of the Town; and

[3] Will not substantially derogate from the intent or purpose of this chapter.

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G. The Public Wellhead Recharge District. The purpose of these regulations is to preserve the quality and quantity of the Town's groundwater resources in order to insure a safe and healthy public water supply. The Public Wellhead Recharge District is located and bounded as shown on the following maps incorporated by reference herein: for Siasconset, a map entitled "Public Wellhead Recharge District: Siasconset," prepared by Horsley, Witten & Heggemann, Inc. dated October, 1990; for the Town, a map entitled "Public Wellhead Recharge District: Town," prepared by Haley & Ward, September 2011. The districts as shown on said maps shall be considered overlay districts to be superimposed on the aforementioned Zoning Map of Nantucket, Massachusetts. Copies of the map shall be on file with the Town Clerk and the Zoning Enforcement Officer upon adoption. Should the boundary of a Public Wellhead Recharge District traverse a lot or lots which are not able to be subdivided in accordance with the underlying zoning district, said lot or lots shall be considered to be subject to these regulations; otherwise, the boundary shall be applied strictly. The Zoning Enforcement Officer shall adjudicate any boundary disputes.

(1) Permitted uses:

(a) All uses permitted by right or by minor site plan review in the underlying district in which land is located, except those expressly prohibited or requiring special permits with major site plan review listed below:

(b) Incidental on-site lawn and garden fertilizing and pest control normally considered accessory to residential or business uses shall be used in accordance with manufacturer's label instructions and stored so as to prevent the generation and escape of contaminated runoff or leachate.

(c) Storage of home or business fuel intended to be consumed on site for space heating, hot water heating and cooking purposes and contained in tanks not exceeding 1,000 gallons, provided that the design and installation of said tanks is reviewed and approved by the Fire Chief, or his designee, in accordance with applicable health and fire safety regulations. Any permitted fuel storage shall be freestanding, above-ground, on an impervious surface, and provided with 110% of storage secondary containment, regardless of size. For the purpose of this § 139-12B, the term "fuel" shall not include liquid propane gas.

(d) Road construction which does not result in earth removal within four feet of historical high water table.

(e) Vehicular transport or vehicular use of petroleum products.

(f) Normal operation and maintenance of existing water bodies and dams, drainage and other structures for water control, water supply, drainage, farming and conservation purposes.

(g) Construction, maintenance, repair and enlargement of drinking water supply related facilities including wells, watermains, pumping station and treatment facilities.

(2) Prohibited uses:

(a) All uses prohibited in the underlying district.

(b) The manufacture, use, pipeline transport, storage, disposal or treatment of hazardous or toxic materials, except as noted in Subsection B(1)(b), (c), (d) and (e) above. Petroleum, fuel oil and heating oil bulk stations and terminals, including, but not limited to, those listed under Standard Industrial Classification (SIC) Codes 5171 (not including liquefied petroleum gas) and 5983 are prohibited, except for municipal use. SIC Codes are

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established by the U.S. Office of Management and Budget and may be determined by referring to the publication, Standard Industrial Classification Manual, and any subsequent amendments thereto. The storage of liquid hazardous materials, as defined in MGL c. 21E and/or liquid petroleum products is prohibited unless such storage is: (i) above ground level, and (ii) on an impervious surface; and either [a] in container(s) or aboveground tank(s) within a building, or [b] outdoors in covered container(s) or aboveground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers, or 110% of the largest container's storage capacity, whichever is greater; however, these storage requirements shall not apply to the replacement of existing tanks or systems for the keeping, dispensing or storing of gasoline provided the replacement is performed in a manner consistent with state and local requirements. For the purpose of this § 139-12B, the term "liquid hazardous material" shall not include liquid propane gas.

(c) Sanitary landfills, dumps, junkyards (defined in MGL c. 140B, § 1) or disposal or landfilling of solid waste, sludge, sewage or septage.

(d) Animal feedlots and manure storage.

(e) Commercial washing, painting, repair or other servicing of motorized vehicles in garages or in the open, except by special permit unless such use is prohibited by § 139-12B(2)(r)[2].

(f) Mining.

(g) On-site disposal of wastewater exceeding 2,000 gallons per day, unless incorporated with an enhanced nitrogen removal system providing equivalency in compliance with MADEP requirements and approved by special permit. Prohibited wastewater disposal shall also include any discharge, deposit, injection, dumping, spilling, leaking or placing so that untreated waste may enter ground or surface water.

(h) Road salt storage.

(i) Truck or bus terminals providing commercial transport services.

(j) Commercial servicing, repair or construction of boats or boat motors, except by special permit.

(k) Dry-cleaning establishments with on-site cleaning operations.

(l) Coin or commercial laundries which rely on on-site septic systems.

(m) Chemical and bacteriological laboratories.

(n) Leather tanning and finishing.

(o) Stockpiling and disposal of snow and/or ice containing deicing chemicals if brought from outside the Public Wellhead Recharge District.

(p) New underground fuel storage tanks with the exception of propane.

(q) All land uses, buildings, and accessory structures, that result in rendering impervious more than 15% or 2,500 square feet of any lot, whichever is greater, unless a system for artificial recharge of 95% of annual precipitation is provided that will not result in the degradation

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of groundwater quality. The Planning Board may require that an applicant provide evidence of groundwater protection which may include a demonstrated history of treatment effectiveness of the proposed design/treatment technology, and it may require monitoring of on-site, pre- and post-development groundwater quality for potential pollutants.

[1] For nonresidential uses, recharge shall be by open stormwater infiltration basins or similar system covered with natural vegetation, and subsurface infiltration shall be used only where other methods are infeasible. For all nonresidential uses, all such basins and subsurface infiltration structures shall be preceded by pretreatment best management practices to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner.

(r) [1] Treatment or disposal works subject to 314 CMR 5.0 for wastewater other than sanitary sewage. This prohibition includes, but is not limited to, treatment or disposal works related to activities under the Standard Industrial Classification (SIC) Codes set forth in 310 CMR 15.004(6) Title 5, except the following:

[a] Publicly owned treatment works (POTWs);

[b] Individual sewage disposal systems handling more than 110 gallons per day per 10,000 square feet of land area that otherwise complies with Title 5, unless incorporated with an enhanced nitrogen removal system providing equivalency in compliance with MADEP requirements.

[c] Treatment works approved by MADEP designed for the treatment of contaminated ground or surface waters and operated in compliance with 314 CMR 5.05(3) or 5.05(13).

[2] Facilities that generate, treat, store or dispose of hazardous waste that are subject to MGL c. 21C and 310 CMR 30 except for the following:

[a] Very small quantity generators as defined under 310 CMR 30.00;

[b] Household hazardous waste centers and/or events operated pursuant to 310 CMR 30.390; or

[c] Waste oil retention facilities required by MGL c. 21, § 52A.

(s) Any building floor drainage systems in existing facilities, in industrial or commercial process areas, or in hazardous material and/or hazardous waste storage areas, which discharge to the ground without a DEP permit or authorization. Any existing facility with such a drainage system shall be required to either seal the floor drain (in accordance with the State Plumbing Code, 248 CMR 2.00), connect the drain to a municipal sewer system (with all appropriate permits and pre-treatment), or connect the drain to a holding tank meeting the requirements of all appropriate DEP regulations and policies. For purposes of this Subsection B(2)(u), a "floor drain" is defined as "an intended drainage point on a floor constructed to be otherwise impervious which serves as the point of entry to any subsurface drainage, treatment, disposal, containment, or plumbing system." This Subsection B(2)(u) is in fulfillment of the requirements of Massachusetts Department of Environmental Protection's Wellhead Protection "Source Approval" Regulations (310 CMR 22.21).

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(t) Solid waste combustion facilities or handling facilities as defined at 310 CMR 16.00.

(u) Stockpiling and disposal of snow or ice removed from highways and streets located outside of Zone II that contains sodium chloride, chemically treated abrasives or other chemicals used for snow and ice removal.

(v) Storage commercial fertilizers, as defined in MGL c. 128, § 64, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.

(3) Permitting of uses in the PWR Overlay District. The Zoning Enforcement Officer shall be the permitting authority for all activities in the Public Wellhead Recharge District which exceed the thresholds of § 139-12B(2)(s) of this chapter, with the exception that the special permit granting authorities shall be the permitting authorities for any uses within the PWR Overlay District which require a special permit.

(a) Finding of water quality compliance.

[1] Prior to the issuance of any permit by the designated review authority, a mandatory referral of the application to the Nantucket or Siasconset Water Commissions, as applicable, shall be made immediately upon receipt of such application. After due consideration, the respective Water Commission, or its designated professional staff, as such authority might be delegated by said Commission, may issue a finding of water quality compliance ("finding") in connection with said application, after due consideration of the requirements of § 139-12B(2)(s), within the time periods prescribed below:

[a] For permit to be issued by the Building Commissioner or Building Inspector as the sole permit authority: 15 days.

[b] For permit to be issued by special permit granting authority: 30 days, or prior to the close of the public hearing, whichever is later.

[2] The failure of each respective Water Commission to submit such finding to the approval authority within the prescribed time period shall be construed to fulfill the requirement for the issuance of a finding. No building permit or special permit shall be issued in the PWR Overlay District unless a finding has been issued therewith, and the conditions, if any, of such finding are incorporated in said permits.

(b) In order to comply with Subsection B(2)(s)[1], any person or firm proposing land uses which exceed the thresholds of this subsection shall apply the practices and technologies found in a publication entitled: "Massachusetts Stormwater Standards Handbook, Volume 1 - 3," (MassDEP 2008) as such publication may be amended from time to time, the respective water companies, in making their finding of water quality compliance, shall decide which techniques and practices are appropriate for each respective application.

(c) Replacement, rehabilitation, modification, or expansion of preexisting, otherwise prohibited nonconforming uses within the PWR Overlay District. No replacement, rehabilitation, modification, or expansion of preexisting nonconforming uses shall be permitted within the PWR Overlay District unless a special permit is issued in connection therewith by the Planning Board. In addition to the criteria set down in § 139-33A the Planning Board shall make a finding that such proposals will be constructed and managed

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in a way that will eliminate threats to the aquifer throughout the proposed life of the structure or use. The Board may include in its decision conditions, limitations and safeguards affecting the design, construction and management of such structures and uses which it finds will help protect the integrity of the aquifer, including but not limited to aboveground construction of tanks, construction of impervious surfaces and moats to catch and collect possible contaminants, pretreatment of waste and/or required tie-in to public sewer services.

H. Flood Hazard Overlay District (FHOD).

(1) Statement of purpose. The purposes of the Flood Hazard Overlay District (FHOD) are to ensure public safety through reducing the threats to life and personal injury; prevent the occurrence of public emergencies resulting from water quality contamination and pollution due to flooding; avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact the community beyond the site of flooding; reduce costs associated with the response and cleanup of flooding conditions; reduce damage to public and private property resulting from flooding waters.

(2) Use regulations. The FHOD is herein established as an overlay district to all other districts. The FHOD includes all special flood hazard areas within the Town of Nantucket designated as Zone A, AE, or VE on the Nantucket County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Nantucket County FIRM that are wholly or partially within the Town of Nantucket are panel numbers 25019C0018G, 25019C0019G, 25019C0033G, 25019C0034G, 25019C0042G, 25019C0061G, 25019C0062G, 25019C0063G, 25019C0064G, 25019C0066G, 25019C0067G, 25019C0068G, 25019C0069G, 25019C0082G, 25019C0083G, 25019C0084G, 25019C0086G, 25019C0087G, 25019C0088G, 25019C0089G, 25019C0091G, 25019C0092G, 25019C0093G, 25019C0094G, 25019C0103G, 25019C0111G, 25019C0112G, 25019C0113G, 25019C0114G, 25019C0132G, 25019C0151G, 25019C0152G, 25019C0156G, 25019C0157G, 25019C0176G, and 25019C0177G, dated June 9, 2014. The exact boundaries of the District may be defined by the one-hundred-year base flood elevations shown on the FIRM and further defined by the Nantucket County Flood Insurance Study (FIS) booklet dated June 9, 2014. The FIRM and FIS booklet are incorporated herein by reference and are on file with the offices of Planning and Land Use Services and Conservation Commission. In addition to meeting the requirements of district in which a particular piece of land may lie all development which lies within a boundary of the FHOD, including structural and nonstructural activities alterations, additions, relocations and demolitions, must be in compliance with MGL c. 181, § 40, and the requirements of the Massachusetts State Building Code pertaining to construction in floodplains and the following additional requirements:

(a) VE Zones: All new construction, except water-related structures such as piers, groins, and similar structures shall be located landward of the reach of mean high tide. Man-made, alteration of sand dunes which would increase potential flood damage is prohibited;

(b) In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available federal, state, local or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(c) Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or five acres, whichever is the lesser, within unnumbered A Zones.

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(d) In a riverine situation, the Natural Resources Coordinator shall notify the following of any alteration or relocation of a watercourse:

- Adjacent communities
- NFIP State Coordinator
- Massachusetts Department of Conservation and Recreation
- 251 Causeway Street Suite 600-700
- Boston, MA 02114-2104
- NFIP Program Specialist
- Federal Emergency Management Agency, Region I
- 99 High Street, 6th Floor
- Boston, MA 02110

(e) All subdivision proposals must be designed to assure that:

[1] Such proposals minimize flood damage;

[2] All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and

[3] Adequate drainage is provided to reduce exposure to flood hazards.

(3) Existing regulations. All development in the district including structural and nonstructural activities whether permitted by right, by site plan review or by special permit, must be in compliance with the following:

(a) Section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (currently 780 CMR);

(b) Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);

(c) Inland Wetlands Restriction, DEP (currently 310 CMR 13.00);

(d) Coastal Wetlands Restriction, DEP (currently 310 CMR 12.00);

(e) Minimum Requirements for Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);

(f) Any variances from the provisions and requirements of the above-referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations;

(g) All other, applicable Nantucket regulations and bylaws.

I. Harbor Overlay District (HOD).

(1) (Reserved)

(2) The purposes of the Harbor Overlay District are to ensure that:

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(a) Existing water-dependent uses are not displaced by nonwater-dependent uses;

(b) Harbor waters and the immediate shoreline and pier areas are zoned to protect water-dependent uses;

(c) Commercial uses allowed by the underlying district regulations are compatible with, support, or otherwise do not interfere with water-dependent uses of the district; and

(d) In new structures, replacement of commercial use with residential use is limited, except where the lot(s) is located within a residential zoning district.

(3) Uses allowed or permitted in this overlay district are the same as those uses allowed or permitted in the underlying district except as modified by the following:

(a) No new nonwater-dependent use or extension of an existing nonwater-dependent use on shorefront land shall:

[1] Displace or significantly disrupt an existing water-dependent use;

[2] Unreasonably diminish the capacity of the site to accommodate future water-dependent uses;

[3] Impede or infringe upon existing public access.

(b) In new structures located on shorefront land within a commercial zoning district, residential uses shall only be allowed above the first floors except for stairways and other mechanical or accessory functions related thereto;

(c) New residential uses shall not be established on pile-supported structures over coastal waters with access from the HOD, except where the lot is located within a residential zoning district;

(d) Any new structure shall be set back a minimum of 25 feet from the mean high water line.

(e) Any new nonwater-dependent use shall be limited to a maximum ground cover ratio of 50%.

(f) New structures located on shorefront land within a commercial zoning district, which in this subsection shall include extensions of existing structures, shall contain the following water-dependent uses and/or uses accessory to these water-dependent uses or provide these on the lot:

[1] Recreational boating-related: commercial marina; boat ramp or other public boating access facilities; boat haul-out facilities; boat repair and maintenance or waterfront facilities associated with inland sites providing these services; launch service; fuel and pump-out services; upland boat storage; services such as ice, laundry, bait, provisions; businesses such as ship chandlery, fishing outfitter; parking.

[2] Commercial fishing related: berthing; loading/unloading areas; gear storage facilities; parking; seafood wholesaler, retail fish market.

[3] Commercial charter boat: berthing, support facilities.

[4] Waterfront public access and amenities (as an enhancement to all other uses, except where water-dependent operations would present a safety concern): public

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restrooms, seating, physical access or view easement.

[5] Passenger and cargo ferry pier and facilities.

(g) Existing structures located within a commercial zoning district and used for residential purposes are exempt from Subsection (f) and may be altered or extended, provided that the existing ground cover of the structure(s), as of April 1, 2017, is not increased by a total of more than 100 square feet.

(4) Additional requirements within the HOD.

(a) Notwithstanding the provisions of § 139-23H(3) and 139-23I, all new commercial uses or extensions of commercial uses that increase the ground cover ratio of the lot or parking requirements, and which are not otherwise subject to major site plan review, shall be subject to minor site plan review by the Director of Planning designated by the Planning Board for site plan review purposes, and such professional planning staff to whom the Director of Planning shall delegate this responsibility, for all uses and expansions up to, and including, 3,999 square feet of gross commercial floor area (including roofed over area).

(b) The Planning Board shall be the special permit granting authority for all commercial uses requiring a special permit within the HOD.

(c) In reviewing a use or expansion requiring either a minor or major site plan review within the HOD, the Planning Board and/or the Director of Planning or his designee shall make a determination that the proposed use or improvements are generally consistent with site plan review standards contained in § 139-23, and with the standards set forth in § 139-12I.

(5) The following uses are prohibited in the Harbor Overlay District:

(a) Cruise ship terminals or support facilities owned or operated in conjunction with vessels moored outside of the Harbor.

(b) Personal watercraft rental.

(c) Private docks unless allowed in § 139-22C and D.

J. Solar Energy Overlay District (SEOD). Notwithstanding the provisions of § 139-7, solar energy facilities are permitted by right in the SEOD. This section shall apply to new land-based solar energy facilities and to physical modifications to existing land-based facilities that materially alter the type, configuration, or size of such facilities or related equipment.

(1) The Planning Board shall be the review authority for site plan review. Any material modifications to the site or the installation following site plan approval shall require a modification subject to approval by the Planning Board.

(2) The following shall apply in addition to the requirements of § 139-23:

(a) The Planning Board shall hold a public hearing for which notice is provided as specified in MGL c. 40A, § 11;

(b) Failure of the Planning Board to take action within 60 days of the public hearing, as such hearing may be extended by consent of the applicant, shall constitute an approval of the site plan and associated application.

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(3) In addition to the submission requirements of § 139-23, the following documentation is required:

(a) The solar energy facility's manufacturer and model and the length, width and height of the solar array;

(b) Drawings of the large-scale ground-mounted solar photovoltaic installation stamped by a professional engineer licensed to practice in the Commonwealth of Massachusetts indicating the proposed layout of the system and any potential shading from nearby structures;

(c) One- or three-line electrical diagram detailing the large-scale ground-mounted solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code complaint disconnects and overcurrent devices;

(d) Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;

(e) Name, address, and contact information for proposed large-scale ground-mounted system installer;

(f) An Emergency, Operation, and Maintenance Plan for the solar energy facilities and any accessory structures or required equipment. All means of shutting down the large-scale ground-mounted solar photovoltaic installation shall be clearly marked on the equipment. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures.

(4) Design standards.

(a) Accessory structures and required equipment shall be clustered on the site to the extent possible and screened from view from abutting properties and rights of way to minimize visual impacts;

(b) Lighting shall be limited to that required for safety and operational purposes.

(c) A sign providing the contact information of the owner or operator, including a twenty-four-hour telephone number, shall be mounted on the site in a visible location for emergency use;

(d) To the extent possible, utility connections shall be installed underground;

(e) Land clearing shall be limited to the minimum amount necessary for the construction, operation and maintenance of the large-scale ground-mounted solar photovoltaic installation. The limits of clearing shall be clearly identified on a site plan.

(5) Removal.

(a) Any large-scale ground-mounted solar photovoltaic installation which has reached the end of its useful life or has been abandoned shall be removed no more than 150 days following the date of discontinued operation. The owner or operator shall notify the Planning Board by certified mail of the proposed date of discontinued operation and plans for removal, which shall consist of:

[1] Physical removal of all large-scale ground-mounted solar photovoltaic installations,

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structures, equipment, security barriers and transmission lines from the site.

[2] Disposal of all solid and hazardous waste in accordance with local state, and federal waste disposal regulations.

[3] Stabilization or re-vegetation of the site as necessary to minimize erosion. The Site Plan Review Authority may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

(6) Abandonment.

(a) Absent notice of a proposed date of removal or written notice of extenuating circumstances, the solar photovoltaic installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board. If the owner or operator of the large-scale ground-mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the Town may enter the property and physically remove the installation.

§ 139-13. Moorlands Management District MMD.

A. Purpose. The Moorlands Management District is established to protect areas of the island known to be excellent examples of temperate zone heath. Heaths and moorlands on Nantucket Island represent an extremely fragile and unique environment, and are a rare and endangered landform of North America. Along coastal areas, they may also include flood-prone areas, glacial valleys and coastal pond systems. It is the intention of this district to permit a type and integrity of use which is consistent with the long-term integrity of these special ecological systems. **[Amended 5-4-1993 ATM by Art. 43, AG approval 5-24-1993; 4-1-2017 ATM by Art. 73, AG approval 5-31-2017]**

B. Permitted uses:

(1) Conservation and recreation, including structures and uses accessory thereto.

(2) One single-family dwelling unit not exceeding 800 square feet of ground coverage, plus not more than 400 square feet area in the aggregate devoted to decks, covered porches, accessory buildings, or other impervious surfaces.

C. Uses allowed by special permit with site plan review. The Planning Board is hereby designated the sole special permit granting authority for all uses, structures and extension or alteration of uses or structures within the Moorlands Management District, including, but not limited to the following: **[Amended 5-5-1992 ATM by Art. 40, AG approval 8-3-1992; 4-14-1997 ATM by Art. 49, AG approval 8-5-1997; 4-10-2002 ATM by Art. 36, AG approval 7-31-2002; 4-1-2017 ATM by Art. 73, AG approval 5-31-2017]**

(1) One single-family dwelling unit exceeding 800 square feet of ground coverage, including structures and uses normally considered accessory thereto, may be allowed, provided that each special permit granted shall include conditions requiring the siting of structures and uses in a manner which minimizes potentially adverse effects on the moorlands environment and its scenic integrity.

(2) Subdivision of properties located within the Moorlands Management District shall require a special permit.

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(a) The issuance of a special permit for subdivision in the Moorlands Management District shall include conditions as to the layout of lots, the design and location of public improvements, and the establishment of permitted building envelopes, so as to minimize potentially adverse effects on the moorlands environment and its scenic integrity.

(b) The Planning Board shall have the authority to require clustering of lots as a condition for the issuance of the special permit in order to accomplish the above-stated objectives.

D. Site plan approval. Prior to the issuance of a building permit for structures or uses permitted as a matter of right or by special permit in the Moorlands Management District, the Planning Board shall have the authority to review and approve the siting of said structure(s) on the lot in accordance with the following performance standards:

(1) To maximize the protection of endangered plant and animal species through the siting of structures and uses a maximum distance away from known or suspected habitats of such species, even when such habitats are located off-site; to minimize disturbance to such species by limiting construction activities to certain times of the year.

(2) To maximize the protection of scenic views through the siting of structures on lower elevations, and clustering of structures near other structures located off-site.

(3) To maximize protection of moorlands and heath-land vegetation and landforms through the use of various measures, including, but not limited to, limitations on grading, fencing, landscaping, driveway and parking facilities, and other physical disruptions to indigenous natural systems.

(4) The Planning Board may include conditions as part of the approval of such a site plan in order to assure conformance with the standards.

E. Procedures. **[Amended 4-10-2000 ATM by Art. 46, AG approval 8-2-2000; 4-1-2017 ATM by Art. 73, AG approval 5-31-2017]**

(1) Failure of the Planning Board to notify the Building Inspector of its action with respect to such application within 20 days of the application filing date shall be deemed approval of the application by the Planning Board.

(2) The Building Inspector shall not accept a building or use permit application for land in the Moorlands Management District unless it contains either:

(a) The Planning Board's decision on the site plan review application; or

(b) Documentation in a form satisfactory to the Building Inspector that 20 days have elapsed from the date of submission of the site plan review application to the Planning Board without said Board having rendered a decision.

§ 139-14. Special Districts: Our Island Home (OIH), and Assisted/Independent Living Community District (ALC). [Amended 4-10-2000 ATM by Art. 27, AG approval 8-2-2000; 4-15-2003 ATM by Art. 27, AG approval 8-27-2003; 9-21-2009 STM by Arts. 10, 11, 12, 13, 14, 15, 16, AG approval 12-11-2009; 4-6-2015 ATM by Art. 64, AG approval 8-5-2015]

A. Permitted uses in all districts:

(1) Apartments for occupants age 55 or older or disabled.

(2) Elder housing facility (nursing home);

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(3) Services and facilities for the benefit of the elderly, long-term care residents, disabled persons, and/or others for whom social-welfare programs may be provided.

B. (Reserved)

C. The following additional uses are permitted in the ALC District through the issuance of a special permit by the Planning Board:

(1) Elder housing facility.

(2) Employee housing;

(3) Affordable housing.

D. Additional requirements of the ALC District.

(1) Open area free from impervious surfaces: at least 20% as defined in § 139-16E;

(2) Minimum vegetative buffer area: 50 feet from all lot lines, 75 feet from street lines (except as necessary for entrance drives and utilities);

(3) Maximum number of units (excluding employee housing and affordable housing): 75 dwelling units;

(4) The requirement for off-street parking and loading facilities shall be established by the Planning Board.

(5) The requirements of this § 139-14D may be waived through the issuance of special permit by the Planning Board based upon a finding that the requested relief is not substantially more detrimental to the neighborhood than the existing conditions.

§ 139-15. Accessory uses. [Amended 5-6-2023ATM by Art. 58, AG approval 9-8-2023]

In addition to the principal buildings, structures or uses permitted in a district, there shall be allowed in that district, as accessory uses, such activities as are subordinate and customarily incident to such permitted uses including, but not limited to, the rental of rooms within an owner-occupied dwelling unit.

§ 139-16. Intensity regulations.[34]

A. Except as expressly provided by § 139-30 of this chapter, no structure or building shall be constructed or used, and no lot or parcel of land shall be built upon, improved or used, and no lot shall be changed in size, shape, boundaries or frontage, unless in conformity with the requirements set forth below: **[Amended 5-5-1992 ATM by Art. 45, AG approval 8-3-1992; 4-8-1996 ATM by Art. 40, AG approval 7-15-1996; 4-15-2003 ATM by Art. 31, AG approval 8-27-2003; 4-15-2003 ATM by Art. 50, AG approval 8-27-2003; 4-12-2004 ATM by Art. 25, AG approval 9-3-2004; 4-4-2006 ATM by Art. 47, AG approval 8-2-2006; 10-23-2006 STM by Art. 3, AG approval 3-21-2007; 4-11-2007 ATM by Art. 38, AG approval 6-28-2007; 4-8-2008 ATM by Art. 55, AG approval 8-18-2008; 4-8-2008 ATM by Art. 64, AG approval 8-18-2008; 4-5-2010 ATM by Art. 54, AG approval 8-5-2010; 4-2-2013 ATM by Art. 37, AG approval 7-26-2013; 4-6-2015 ATM by Art.**

34. Editor's Note: 11-13-1990 STM by Art. 20, AG approval 3-19-1991, changed an area bounded by Gardner Road, Nantucket Harbor, Polpis Harbor, and 500 feet south of Polpis Road from its classification as LUG-1 to a LUG-3 classification, with the following amendment: "Provided, however, that all lots in this district in existence as of November 15, 1990, shall have the benefit of the LUG-1 intensity regulations." Subsequently, said amendment was rescinded 4-10-1995 ATM by Art. 51, AG approval 5-22-1995, effective 1-1-2000.

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47, AG approval 8-5-2015; 11-9-2015 STM by Art. 2, AG approval 12-29-2015; 4-1-2017 ATM by Art. 68, AG approval 5-31-2017; 11-6-2017 STM by Art. 19, AG approval 2-26-2018; 4-1-2019 ATM by Art. 47, AG approval 8-6-2019]

		Yard Setback			
District Defined in § 139-3	**Minimum Lot Size (square feet)**	**Front (feet)**	**Side/Rear (feet)****	**Frontage (feet)***	**Ground Cover Ratio**
LUG-1	40,000	35	10	100	7%
LUG-2	80,000	35	15	150	4%
LUG-3	120,000	35	20	200	3%
R-1	5,000	10	5	50	30%
R-5	5,000	10	Side: 10 minimum on one side; 5 thereafter Rear: 5	50	40%
R-5L	5,000	10	Side: 10 minimum on one side; 5 thereafter Rear: 5	50	30%
R-10	10,000	20	10	75	25%
SR-10	10,000	15	5	75	25%
SR-20	20,000	30	10	75	12.50%
V-R	20,000	20	10	100	10.0%
R-20	20,000	30	10	75	12.5%
R-40	40,000	30	10	75	10.0%
ROH/SOH	5,000	None	5	50	40% ROH 50% SOH
CDT	3,750	None	Side: none Rear: 5	35	75%
RC	5,000	None	5	50	50%
RC-2	5,000	10	5	40	50%
CMI	5,000	None	None	50	50%
CN	7,500	10	Side: 5 Rear: 10	50	40%
CTEC	10,000	10	Side: 5 Rear: 10	50	40%

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Yard Setback					
District Defined in § 139-3	**Minimum Lot Size (square feet)**	**Front (feet)**	**Side/Rear (feet)****	**Frontage (feet)***	**Ground Cover Ratio**
CI	15,000	20	Side: none Rear: 10	75	50%
MMD	10 acres	50	50	300	0.5%
VN	10,000	10	10	50	30%
VTEC	40,000	30	20	100	25%

NOTES:
See § 139-16C for additional requirements and exceptions for yards.

B. Exceptions for frontage*.

(1) The Planning Board may grant a special permit reducing the minimum frontage required in commercial districts to no less than 20 feet, provided that the use or structure on the lot to be granted such a reduction is a commercial use or structure and that such reduction in frontage will not be substantially more detrimental to the neighborhood. **[Amended 5-6-2023ATM by Art. 56, AG approval 9-8-2023]**

(2) Frontage may be reduced by up to 30% for lots fronting on the turning circle of a dead-end street.

(3) Frontage of a lot may be reduced for an individual lot in a subdivision or on a plan endorsed "approval not required" to a minimum of 50 feet (which width shall not be reduced at any depth within the lot), provided that:

(a) The total number of lots does not exceed the total permitted by the area requirements of § 139-16A above.

(b) The total frontage of all lots shall meet or exceed the total frontage requirements of § 139-16A above.

(c) Each lot shall have a regularity factor of 0.55 or more as required by Subsection D below.

(d) Notice of the reduction of frontage for any lot under this § 139-16B(3) shall have been recorded or registered as an encumbrance upon the record title for each lot considered in making any computation under this section concurrently with the recording or registration of the plan which created such lot with reduced frontage or prior to conveyance or building upon any individual lot shown upon such plan.

C. Additional requirements and exceptions for yards. [See § 139-33E(3) below.] **[Amended 5-5-1992 ATM by Art. 36, AG approval 8-3-1992; 4-12-2004 ATM by Art. 40, AG approval 9-3-2004; 4-8-2008 ATM by Art. 29, AG approval 8-18-2008; 4-5-2010 ATM by Art. 54, AG approval 8-5-2010]**

(1) Notwithstanding the provisions of § 139-16C(4), the Board of Appeals may grant a special permit to reduce the ten-foot side yard setback in R-5 and the ten-foot side and rear yard setback

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in R-10, R-20 and SR-20 to five feet. **[Amended 4-3-2018 ATM by Art. 45; AG approval 7-18-2018; 4-1-2019 ATM by Art. 49, AG approval 8-6-2019]**

(2) The Board of Appeals may grant a special permit to validate unintentional setback intrusions not greater than five feet into a required yard and not closer than four feet from a lot line, provided that it shall first find that the burden of correcting the intrusion substantially outweighs any benefit to an abutter of eliminating the intrusion and, if the intruding structure was so sited after 1990, the siting of the structure was reasonably based upon a licensed survey.

(3) For lots abutting two or more streets or ways, whether constructed or not, the required front yard setback shall be maintained from one street or way, and the required side yard setback shall be maintained from each other lot line, except in the R-1 and RC-2 Districts, where a minimum ten-foot side yard setback shall be maintained from any other street or way, whether constructed or not.

(4) In the R-5 District the ten-foot side yard setback may be reduced to five feet subject to the following: **[Amended 6-25-2020 ATM by Art. 49, approved 10-27-2020]**

(a) A five-foot side yard setback may apply to a secondary dwelling or accessory structure that is located within 20 feet of the rear lot line, or to sheds of not more than 50 square feet in ground cover and eight feet in height, as measured from the top of the slab or pier foundation; or

(b) Where a common driveway of at least 10 feet in width is provided to allow access to two or more lots.

(5) In the R-10 District the ten-foot side and/or rear yard setback may be reduced to five feet for sheds of not more than 50 square feet in ground cover and eight feet in height, as measured from the top of the slab or pier foundation. **[Added 6-25-2020 ATM by Art. 49, approved 10-27-2020]**

D. Regularity formula.

(1) The regularity factor of any lot shall not be less than 0.55. The regularity factor shall be determined by the formula:

$r = 16A/p^2$ where

r = regularity factor

A = land area in square feet

p = perimeter in feet

(2) That part of the lot area in excess of the required lot area may be excluded from the regularity formula in determining the regularity factor. The perimeter containing the excess area shall not include the required frontage.

(3) The regularity formula shall not apply to lots recorded or endorsed prior to April 15, 1980.

E. Open area.

(1) Except for lots within the CDT District, a lot containing a commercial building, structure or use shall have a minimum of 20% of the land as open area free from impervious surfaces.

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[Amended 4-2-2016 ATM by Art. 60, AG approval 7-12-2016]

(2) Impervious surfaces here include, but are not limited to, paved and gravelled areas, walkways and sidewalks, patios, decking, game courts, pools, buildings and other structures, and areas designated for parking or loading; provided, however, that in computing the percentage of open area, brick sidewalks may be counted as open area up to a maximum of 10% of the lot or site.

(3) Relief from this open area requirement may be obtained by special permit by the special permit granting authority, provided that it makes the express finding that the applicant has provided sufficient and appropriate landscaping; and further provided that it makes the finding that the benefits to the community and the neighborhood from the reduction of open area requirements, as conditioned by the decision granting the special permit, will outweigh the benefits that would be derived from the provision of the open area requirements as would otherwise be required. The special permit granting authority shall impose appropriate conditions for the granting of such a special permit, including, but not limited to, the substitution for off-site landscaping elements, the contribution of the applicant toward the creation of common public spaces, and requirements for the permanent maintenance of landscaping features within the site by the applicant and its successors. **[Amended 4-30-2003 ATM by Art. 53, AG approval 8-27-2003]**

(4) For major commercial developments, the open area requirement (20%) is set forth in § 139-11E above. **[Amended 11-6-2017 STM by Art. 19, AG approval 2-26-2018]**

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ARTICLE IV
Miscellaneous Regulations

§ 139-17. Height limitations. [Amended 4-12-1994 ATM by Art. 55, AG approval 4-29-1994; 4-12-1999 ATM by Art. 37, AG approval 8-10-1999; 4-15-2003 ATM by Art. 31, AG approval 8-27-2003; 4-8-2008 ATM by Art. 64, AG approval 8-18-2008; 4-6-2009 ATM by Art. 47, AG approval 8-10-2009; 9-21-2009 STM by Art. 22, AG approval 12-29-2009]

A. Building and structure height is measured as the average height of all sides of a building or structure from the average mean grade to the highest point of the building and/or structure. There shall be only one highest point for each building and/or structure. No one building and/or structure side shall exceed 32 feet, except in the CDT and CMI Districts, or as otherwise permitted. Height limitations, except as noted in the Village Height Overlay District and the Nantucket Cottage Hospital Overlay District, shall be as follows: **[Amended 4-6-2015 ATM by Art. 70, AG approval 8-5-2015; 4-2-2016 ATM by Art. 36, AG approval 7-12-2016; 11-6-2017 STM by Art. 19, AG approval 2-26-2018; 6-5-2021ATM by Art. 63, AG approval 10-7-2021]**

	Zoning District	Maximum Height
Country Overlay District	SR-1, SOH, SR-10, SR-20, LUG-1, LUG-2, LUG-3, MMD, VN, VTEC, VR	30
Town Overlay District	R-1, ROH, R-5, R-10, R-20, R-40, CDT, CN, CTEC, CI, RC, RC-2	30
Town Overlay District	CMI	30[1]

NOTES:

[1]With a special permit allowance to 38 feet.

B. The following uses are permitted to exceed such height limitation to an extent reasonable and customary:

(1) Roof structures for ornamental purposes, such as roof walks, cupolas, spires and steeples.

(2) Penthouses on buildings to the extent necessary for mechanical purposes, not higher than eight feet and with area less than 25% of the building ground cover.

(3) Chimneys attached to a building, provided height shall not exceed 40 feet.

(4) Building-mounted vertical wind turbines and residential-type antennas, provided height shall not exceed 40 feet.

(5) Lighthouses and beacons.

(6) Residential WECS and WECS as an accessory use in the CI District, provided that maximum tower height shall not exceed 60 feet. Height shall be measured from the mean grade surrounding the support pad(s) to the base of the wind generator measured along the vertical axis of the tower.

(7) Solar energy facilities located within the SEOD. **[Added 4-1-2019 ATM by Art. 62, AG approval 8-6-2019]**

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C. Exceptions by special permit. The special permit granting authority may grant a special permit to allow the following structures to exceed such height limitations:

(1) Chimneys.

(2) Antennas.

(3) Water towers and stand pipes.

(4) Residential WECS greater than 60 feet in height and commercial WECS. Height shall be measured from the mean grade surrounding the support pad(s) to the base of the wind generator measured along the vertical axis of the tower.

(5) Buildings located within the CDT Zoning District, provided that a finding is made by the special permit granting authority that the proposed height exceeding 30 feet is:

(a) Both necessary and desirable to the restoration or preservation of an existing, historic structure, if applicable;

(b) Both complementary and appropriate to the scale of the adjoining streetscape which is supported by the existence of surrounding buildings of equivalent height and the receipt of approval from the Historic District Commission; and

(c) Not detrimental to adjoining properties by substantially casting them in shadow or resulting in the loss of privacy, air circulation, sunlight, safe ingress and egress or overcrowding.

(6) (Reserved)

(7) The height of a structure which is situated within the "Areas of one-hundred-year Flood" and/or the "Areas of 100-Year Coastal Flood with Velocity" as established by the Federal Emergency Management Agency ("FEMA") and depicted upon the Flood Insurance Rate Map promulgated by FEMA, as from time to time revised, shall not exceed 30 feet above the minimum height at which the first floor of the structure will conform with all applicable building codes and FEMA requirements, except in the CDT District where a maximum height may be determined by special permit. **[Added 4-6-2015 ATM by Art. 69, AG approval 8-5-2015; amended 4-2-2016 ATM by Art. 60, AG approval 7-12-2016]**

§ 139-18. Off-street parking requirements. [Amended 5-5-1992 ATM by Art. 43, AG approval 8-3-1992; 5-5-1992 ATM by Art. 47, AG approval 8-3-1992; 4-12-1999 ATM by Art. 38, AG approval 8-10-1999; 4-10-2000 ATM by Art. 46, AG approval 8-2-2000; 4-9-2001 ATM by Art. 38, AG approval 8-2-2001; 4-15-2003 ATM by Art. 30, AG approval 8-27-2003; 4-15-2003 ATM by Art. 31, AG approval 8-27-2003; 4-15-2003 ATM by Art. 51, AG approval 8-27-2003; 4-12-2004 ATM by Art. 25, AG approval 9-3-2004; 4-9-2007 ATM by Art. 37, AG approval 6-28-2007; 4-8-2008 ATM by Art. 64, AG approval 8-18-2008; 4-6-2009 ATM by Art. 28, AG approval 8-10-2009; 4-6-2011 ATM by Art. 64, AG approval 9-15-2011; 4-5-2014 ATM by Art. 62, AG approval 5-7-2014]

A. Except in the CDT District, no land shall be used and no building or structure shall be erected, enlarged or used unless the off-street parking space requirements are met as specified in this § 139-18.

(1) For the purpose of this § 139-18, an enlargement of any building or a change in use of a building, which increases the parking requirements beyond what currently exists, shall require the provision of off-street parking for the existing building as if it were newly constructed.

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(2) When a lot is used for more than one use, parking requirements shall be computed for each use.

(3) Where the computation of required parking space results in a fractional number, only the fraction of 0.50 or more shall be counted as one.

(4) Required off-street parking spaces shall be provided on the same lot as the principal or accessory use they are required to serve.

(5) Parking upon a lot shall be located entirely within delineated parking areas. Delineated shall mean, for the purposes of this subsection, a parking area defined by edging or surface material so that it can be differentiated from surrounding yard or landscaped areas. Continuous use of landscaped areas to meet parking needs shall be deemed a change of use and may require additional screening as noted in this sub-section;

(6) Head-in, ninety-degree parking spaces and forty-five-degree parking spaces shall not be less than nine feet in width and 20 feet in length. The required length for parallel parking spaces shall not be less than 20 feet. For residential parking only, one required parking space may be reduced to a minimum dimension of seven feet in width and 17 feet in length.

(7) Parking areas containing five or more spaces required for a commercial use shall be so arranged as not to require backing of vehicles onto any street or way.

(8) Stacked or tandem parking spaces are allowed for residential uses only.

(9) Aisle width. For lots containing one or more commercial uses, aisle width shall not be less than 20 feet for ninety-degree parking, 15 feet for forty-five-degree parking (angle shall be measured between center line of parking space and center line of aisle), and 12 feet for parallel parking. Aisle width requirements shall not apply to residential uses except for lots containing multifamily or duplex dwelling units, in which case a minimum aisle width of 12 feet shall apply for ninety-degree, forty-five-degree, and parallel parking.

B. Parking requirements. **[Amended 4-6-2015 ATM by Arts. 61, 62, 70, AG approval 8-5-2015; 11-9-2015 STM by Art. 2, AG approval 12-29-2015; 4-2-2016 ATM by Art. 52, AG approval 7-12-2016; 11-6-2017 STM by Art. 19, AG approval 2-26-2018; 5-6-2023ATM by Art. 44, AG approval 9-8-2023]**

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Residential [§ 139-7]										
	Zoning Districts	Single-Family Dwelling	Secondary Dwelling Unit[1]	Accessory Dwelling	Tertiary Dwelling/ Tiny House Unit	Apartment[2]	Garage Apartment	Studio	Duplex	Elder Housing Facilities
Town Residential Districts	R-1 SR-1	1	.6/br	1	N/A	N/A	0.5/br	0	0.75/br not to exceed 4	1 per 2 residents
	ROH SOH	1	1	0	N/A	N/A	0.5/br	0	0.75/br not to exceed 4	1 per 2 residents
	R-5	1	1	1	1	N/A	1	1	0.75/br not to exceed 4	1 per 2 residents
	R-10 SR-10	2	0.75/br	1	1	N/A	1	1	0.75/br not to exceed 4	1 per 2 residents
	R-20 SR-20	2	1.0/br	1	1	N/A	1	1	0.75/br not to exceed 4	1 per 2 residents
	R-40	2	1.0/br	1	1	N/A	1	1	0.75/br not to exceed 4	1 per 2 residents
Town Commercial Districts	CDT	1	0	0	N/A	0	0	0	0	0
	CMI	1	N/A	0	N/A	1.0/br	1	1	0.75/br not to exceed 4	1 per 2 residents
	CN	1	N/A	1	N/A	1.0/br	1	1	0.75/br not to exceed 4	1 per 2 residents
	CTEC	1	N/A	1	N/A	1.0/br	1	1	0.75/br not to exceed 4	1 per 2 residents

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Residen-tial [§ 139-7]										
	Zoning Districts	Single-Family Dwelling	Second-ary Dwelling Unit[1]	Accessory Dwelling	Tertiary Dwelling/ Tiny House Unit	Apart-ment[2]	Garage Apart-ment	Studio	Duplex	Elder Housing Facilities
	CI	N/A	N/A	N/A	N/A	1.0/br	1	1	0.75/br not to exceed 4	N/A
	RC	1	1	0	N/A	0.75/br	0.75/br	0	0.75/br	1 per 2 residents
	RC-2	2	0.75/br	1	N/A	1.0/br	1.0/br	1	1.0/br	1 per 2 residents
Country Residen-tial Districts	V-R	2	2	1	N/A	N/A	1	1	N/A	1 per 2 residents
	LUG-1	2	2	1	1	N/A	1	1	N/A	1 per 2 residents
	LUG-2	2	2	1	1	N/A	1	1	N/A	1 per 2 residents
	LUG-3	2	2	1	1	N/A	1	1	N/A	1 per 2 residents
	MMD	2	2	1	N/A	N/A	1	1	N/A	N/A
Country Com-mercial Districts	VN	2	N/A	1	N/A	N/A	1	1	N/A	N/A
	VTEC	2	N/A	1	N/A	N/A	1	1	N/A	N/A

NOTES:

"br" shall mean "bedroom" as determined by the ZEO.

[1]For interpretation purposes, the secondary dwelling unit shall be the unit with the lesser number of bedrooms and shall not be related to the sequence of building.

[2]For interpretation purposes, "apartment" shall include the following uses contained within the Use Table in § 139-7A[35]: apartment, apartment building, garage apartment, and workforce rental community.

Commercial and Other Uses	Number of Spaces
Rooming, lodging and guest houses	3 spaces plus 1 space for each rental unit over 2
Motels, hotels and inns	2 spaces plus 1 spaces for each 3 rental units plus 1 space for each 3 persons of total certified building occupancy for meetings and functions

35. Editor's Note: The Use Table is included as an attachment to this chapter.

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Commercial and Other Uses	Number of Spaces
Restaurants, taverns and bars, including their outside seated-service areas:	ROH: 0 spaces required; RC and CMI in the MIPOD only: 1 space for each 6 seats; RC: 1 space for each 4 seats; all other districts: 1 space for each 3 seats
Take-out food establishments	5 spaces per take-out service station and 1 for each 4 seats
Employer dormitories	1 space per bedroom
Retail stores and services	1 for each 200 square feet of gross floor area
Recreational facilities (commercial)	1 for each 3 persons of total certified building occupancy
All above uses	1 space for each 3 employees on peak shift
Theaters, auditoriums and other places of public assembly	1 space for each 4 seats
Offices	1 for each 200 square feet of gross floor area, except in the CTEC, CI, VN and VTEC where 1 space for each 500 square feet is required
Commercial industrial and industrial uses, as specified in the "use chart" in § 139-7A	1 for each 900 square feet of gross floor area
Storage or office space ancillary to a commercial use	0 spaces

Use	Parking Spaces Required
Elder housing facilities	1 space for each 2 beds
Hospital	2 spaces for each 1,000 square feet of gross floor area
Hospital housing	1 space for each bedroom
Medical office	1 space for each 250 square feet of gross floor area
Medical supply sales	
Office (including office for home care providers)	
Pharmacy	
Rehabilitation center	1 space for each 2 beds
Specialty testing facilities	1 space for each 250 square feet of gross floor area
Wellness center	1 space for each 250 square feet of gross floor area

C. For other permitted uses or uses by exception which are not covered in § 139-18B above, comparably adequate off-street parking shall be required as shall be reasonably determined by the Zoning Enforcement Officer, or the special permit granting authority having jurisdiction.

D. Relief from parking requirements of this chapter:

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(1) May be secured through the issuance of a special permit by the special permit granting authority, provided that such authority finds;

(a) That the granting of such relief is in harmony with the general purpose and intent;

(b) That full compliance is physically impossible for the applicant to provide, or, if physically possible, would have a significant adverse effect upon the scenic or historic integrity of the neighborhood; and

(c) The granting of relief would not be contrary to sound traffic, parking or safety considerations; and

(2) For properties located in the LUG-1, LUG-2, LUG-3 and MMD Zoning Districts, special permit relief shall be limited to a waiver of not more than 30% of the spaces required under the provisions of § 139-18.

§ 139-19. Screening of parking areas, driveways and off-street loading facilities. [Amended 4-12-1999 ATM by Art. 39, AG approval 8-10-1999; 4-9-2001 ATM by Art. 27, AG approval 8-2-2001; 4-15-2003 ATM by Art. 32, AG approval 8-27-2003; 4-5-2014 ATM by Art. 62, AG approval 5-7-2014]

A. Parking areas with 5 or more spaces on a lot shall be effectively screened on each side adjoining or fronting on any street and/or abutting property by a wall, fence or densely planted compact hedge not less than 3 feet nor more than 8 feet in height, except where the closest point of such parking area is at least 75 feet from the nearest abutting property line or street.

B. For parking areas of 20 spaces or more on the lot, the following additional screening requirements shall apply:

(1) Parking areas shall be bordered by a 10-foot-wide planting strip buffer with at least 1 tree per 8 parking spaces. Tree type and size shall be determined by the special permit granting authority.

C. All off-street loading facilities which are within 30 feet of any residential area shall be completely screened therefrom by dense year-round vegetation, building walls, or a solid fence or wall not less than 6 nor more than 8 feet in height.

D. Relief from the screening of parking areas, driveways, and off-street loading facilities requirements of this chapter may be secured through the issuance of a special permit by the special permit granting authority, provided that such authority finds:

(1) That the granting of such relief is in harmony with the general purpose and intent;

(2) That full compliance is physically impossible for the applicant to provide, or, if physically possible, would have a significant adverse effect upon the scenic or historic integrity of the neighborhood; and

(3) The granting of relief would not be contrary to sound traffic, parking or safety considerations.

§ 139-20. Off-street loading facilities. [Amended 5-5-1992 ATM by Art. 42, AG approval 8-3-1992; 4-10-2000 ATM by Art. 46, AG approval 8-2-2000; 4-5-2014 ATM by Art. 62, AG approval 5-7-2014]

Off-street loading facilities are not required in any district except as may be determined by the special permit granting authority during review of a use permit. The special permit granting authority shall

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determine the size and location of any required off street loading facilities. Off-street loading facilities are not permitted in the CDT or Town Residential Districts, as specified in the "use chart" in § 139-7A.

§ 139-20.1. Driveway access. [Added 4-13-1998 ATM by Art. 34, AG approval 7-31-1998; amended 4-12-1999 ATM by Art. 40, AG approval 8-10-1999; 4-9-2001 ATM by Art. 27, AG approval 8-2-2001]

A. Purpose. This § 139-20.1 regulating driveway access is enacted under the authority of MGL c. 40A for the purposes of protecting the safety and general welfare of the inhabitants of the Town of Nantucket, by the creation of standards, guidelines and regulatory and administrative processes governing the creation of driveway access within all zoning districts.

B. Regulation of driveway access. No building permit in connection with a building or use which creates a new driveway access onto a public right-of-way, or private right-of-way intended for public use, shall be issued, nor use established, until such driveway access has been approved by the Nantucket Department of Public Works (DPW), as complying with the requirements of § 139-20.1B(2). This requirement may be waived for individual driveway accesses on lots shown on a definitive subdivision which has been endorsed by the Planning Board pursuant to the Subdivision Control Law, MGL c. 41, § 81K et seq., and for which a certification by the DPW has been received by the Planning Board that the driveway accesses within the subdivision comply with the requirements of § 139-20.1B(2). 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 "Old Historic Districts" as shown on the map entitled "Old Historic Districts," dated February 11, 2020, as may be amended from time to time by the HDC. **[Amended 4-12-1999 ATM by Art. 40, AG approval 8-10-1999; 4-15-2003 ATM by Art. 30, AG approval 8-27-2003; 4-12-2004 ATM by Art. 45, AG approval 9-3-2004; 4-13-2005 ATM by Art. 40, AG approval 8-5-2005; 4-5-2014 ATM by Art. 62, AG approval 5-7-201411-6-2017 STM by Art. 19, AG approval 2-26-2018; 6-25-2020ATM by Art. 50, AG approval 10-27-2020]**

(1) No more than one driveway access shall be allowed on a lot. However, the Planning Board may grant a waiver to allow two or more driveway accesses in accordance with § 139-20.1C.

(2) Minimum driveway standards associated with driveway accesses. No request for approval of a driveway access permit shall be approved unless the driveway complies with the following minimum standards:

(a) Driveways shall be designed and constructed so as not to result in the direction of stormwater runoff, and soil, stones, or other debris, onto or within the intersecting right-of-way.

(b) No driveway access shall be located closer than 25 feet from the curbline of an intersecting street, measured from the nearest point of the driveway.

(c) Driveways shall be constructed with a slope not exceeding 12% at their intersection with the street. The DPW may approve a greater slope based on a finding that a lesser slope is infeasible due to the topography or other natural characteristics of the site, and the driveway is designed using sound engineering practice.

(d) Any new or modified driveways intersecting with a public or private paved road shall have a cobblestone, belgium block, concrete, brick, asphalt apron, or other hard surface material. The apron shall extend across the entire width of the driveway and shall have a minimum depth of 10 feet behind the edge of pavement.

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(e) Any areas disturbed in connection with the construction of the driveway shall be stabilized to prevent erosion and sedimentation of the subject property, adjacent property, and of the intersecting street. Adjoining drainage structures shall be protected from sedimentation. Disturbed areas shall be loamed and seeded immediately following construction, or temporary erosion control measures used outside of the growing season.

(f) The width of driveway accesses shall be measured at the limit of the traveled way within the street right-of-way.

[1] Driveway width for commercial uses shall be a minimum of 12 feet and a maximum of 30 feet, excluding corner roundings which may have a maximum radius of 5 feet.

[2] Driveway access for residential uses shall be cleared free of vegetation and obstruction to a minimum width of 12 feet and a minimum height of 13 feet. The travelled surface of the driveway shall be a minimum of 10 feet in width and a maximum of 15 feet in width, excluding corner rounding which may have maximum radius of 2 feet. A residential driveway access not exceeding 20 feet in width (excluding corner rounding with a maximum radius of 2 feet) may be allowed subject to its conformance with standards as shown in Option 1, below and subject to conditions set forth in Subsection B(2)(g) below. In the R-5 District only, 2 such driveways may be constructed on a single lot, provided that the driveways are separated by at least 5 feet of landscaping or walkway as shown in Option 2, below. Tandem parking extensions to any such driveway configuration as shown in Options 3 and 4, below, may be allowed through the issuance of a special permit by the Planning Board.

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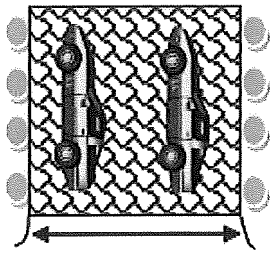
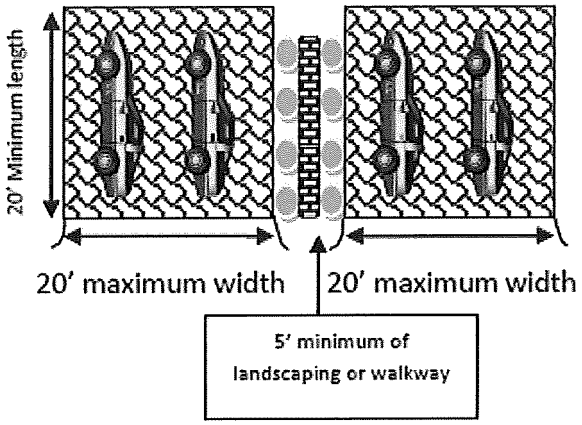
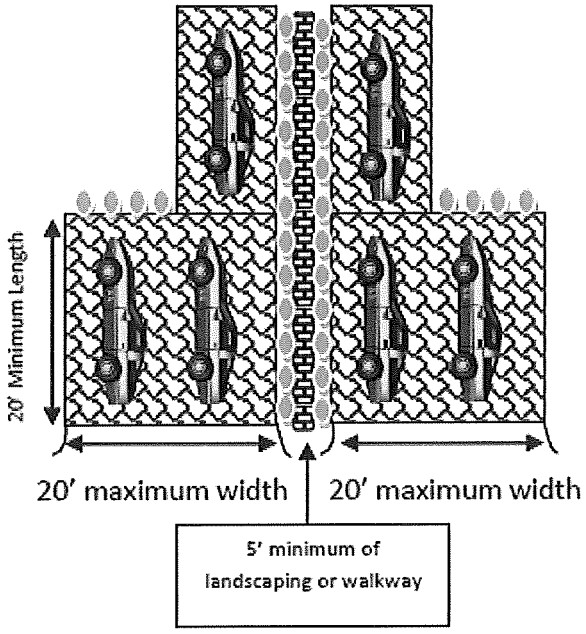
Option #1



Option #2



Option #3



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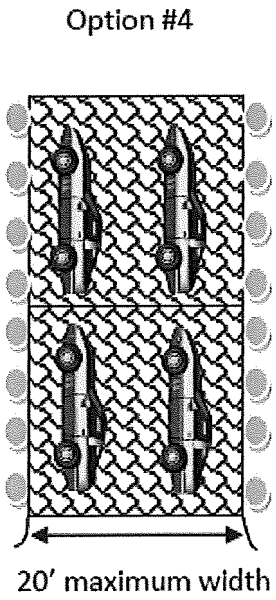

[3] In the R-5 and R-10 Districts only, head-in residential driveways not exceeding 27 feet in width and not more than 20 feet in depth measured from the property line shall be permitted subject to the screening requirements above.

(g) On-site turnarounds will be required for all lots within the LUG-1, LUG-2, LUG-3, and MMD Zoning Districts, except for those lots in said districts that are within a cluster, MRD, flex development, or open space residential development subdivisions. In addition, on-site turnarounds are required for lots with driveway access onto the following roadways:

Amelia Drive

Atlantic Avenue

Bartlett Road

Cliff Road

Consue Springs Street: a.k.a. Union Street: between Orange Street and Spring Street

Essex Road

Fairgrounds Road

Francis Street

Friendship Lane

Hooper Farm Road

Hummock Pond Road

Madaket Road

Main Street: between Quaker Road and New Lane

Main Street (Siasconset)

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Miacomet Avenue: between Surfside Road and Otokomi Road

Miacomet Road: between Surfside Road and Otokomi Road

Milestone Road

Milk Street

New Lane

New Street, Siasconset

Nobadeer Farm Road

Old South Road

Orange Street: from (Consue Springs Street Union Street east)

Otokomi Road

Pleasant Street

Polpis Road

Prospect Street

Quaker Road

Raceway Drive

Sankaty Road

Somerset Lane

Somerset Road: between Friendship Lane and Vesper Lane

Sparks Avenue

Surfside Drive

Surfside Road

Union Street: between Francis Street and Consue Springs Street to Orange Street

Vesper Lane

Washington Street

(h) All secondary dwellings, tertiary dwellings, and garage apartments approved by the Planning Board shall have a combined driveway access. However, the Planning Board may approve separate access for such dwellings on lots that are not expressly permitted two driveway accesses pursuant to § 139-20.1B(1), upon a finding made during the review of secondary dwelling, tertiary dwelling, and garage apartment applications that the separate access would not have a significant and adverse effect on the scenic or historic integrity of the neighborhood and that separate access is not contrary to sound traffic and safety considerations. Access to secondary dwellings, tertiary dwellings, and garage apartments shall be clear of obstructions or vegetation to a width of 12 feet and a height of 13 feet along a driveway with a minimum improved width of 10 feet. **[Amended 5-2-2022 ATM by Art. 53, AG approval 10-31-2022]**

(3) Common driveways for shared access by 2 or more lots shall comply with the requirements of this section.

(a) An easement(s) running with the land in perpetuity, and providing for maintenance, repair,

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and reconstruction of the driveway and any associated drainage by parties in interest, shall be executed by the owners, and recorded in the Registry of Deeds prior to the issuance of any building permits.

C. Waivers. The Planning Board may grant a waiver to any of the requirements of this § 139-20.1 through the granting of a special permit, provided that, in addition to finding that the requirements of § 139-30 have been satisfied, the Board finds that the granting of the special permit would not have a significant and adverse effect on the scenic or historic integrity of the neighborhood, and is not contrary to sound traffic and safety considerations.

§ 139-21. Wind energy conversion systems (WECS). [Amended 4-14-1997 ATM by Art. 49, AG approval 8-5-1997; 4-8-2008 ATM by Art. 65, AG approval 8-18-2008; 4-6-2009 ATM by Art. 47, AG approval 8-10-2009]

A. Residential WECS.

(1) Permitted as an accessory use in all districts.

(2) A maximum of one tower per lot shall be permitted. Additional towers may be allowed by special permit.

(3) Towers greater than 45 feet in height shall be set back from the property line a distance measured from the mean grade surrounding the support pad(s) to the tip of a blade in vertical position measured along the vertical axis of the tower. Towers 45 feet or less in height shall be subject to the setback requirements of § 139-16.

B. Commercial WECS.

(1) Permitted as a primary use in the following districts by special permit with major site plan review: LUG-1, LUG-2, LUG-3, RC-2, CN, CTEC, VN, VTEC and CI.

(2) Agricultural WECS in all zoning districts shall be subject to the restrictions of (4) and (5) of this section and no special permits shall be required.

(3) The maximum number of towers per lot shall be limited by special permit except in the CI District where one may be permitted as an accessory use.

(4) Towers greater than 30 feet in height shall be set back from the property line a distance measured from the mean grade surrounding the support pad(s) to the tip of the blade in a vertical position measured along the vertical axis of the tower. Towers 30 feet or less in height shall be subject to the setback requirements of § 139-16.

(5) Maintenance. Every two years the owner shall submit a structural report to the Building Inspector attesting to the structural integrity of the wind generator, tower and/or support system.

(6) The granting of a special permit for a commercial WECS shall be based upon a finding by the Planning Board that the location of the WECS does not have a substantial adverse impact on the surrounding area.

C. Submission requirements. The application for a building permit for WECS shall be accompanied by the following documents in addition to those documents required by § 139-26:

(1) A plot plan prepared and stamped by a registered land surveyor indicating the location of the proposed WECS, existing and proposed structures, aboveground utility lines and any other

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significant features or appurtenances.

(2) Structural drawings prepared and stamped by a registered professional engineer of the wing tower, including pad design and guy wire design, if applicable.

(3) Drawings and specifications prepared and stamped by a registered professional engineer of the generator, hub and blades, electrical support facilities, including transformers, cables and control devices.

D. Removal. The Building Inspector may cause the owner to remove WECS, including all appurtenances thereto, if the facility fails to generate power for one year or more.

E. Electromagnetic interference.

(1) Prior to the issuance of a building permit, the manufacturer shall provide sufficient data and documentation to establish that the installation will not cause electromagnetic interference to any abutter.

(2) The WECS installation shall comply with Federal Communications Commission Regulation 47 CFR 15.

(3) Upon the complaint of an abutter, an investigation shall be performed by an agent of the Planning Board. The agent shall submit a report of his findings to the Planning Board for review and evaluation. A fee for the report shall be established by the Planning Board. After review and evaluation of the report, the Planning Board shall determine if the installation causes electromagnetic interference to any abutter. The fee for the report shall be paid by the complainant, unless the Planning Board determines that there is electromagnetic interference to an abutter, in which case the owner shall pay the fee.

(4) If electromagnetic interference is caused by the installation of a WECS, the installation shall be deemed a public nuisance in violation of § 139-7B of this chapter. The violation shall be corrected within 90 days from the date of notification. If the electromagnetic interference cannot be remedied, the WECS shall be removed or relocated. **[Amended 4-6-2011 ATM by Art. 64, AG approval 9-15-2011]**

§ 139-22. Island perimeter restrictions. [Amended 5-5-1992 ATM by Art. 38, AG approval 8-3-1992; 4-10-1995 ATM by Art. 50, AG approval 5-22-1995; 4-13-1998 ATM by Art. 35, AG approval 7-31-1998; 4-10-2000 ATM by Art. 29, AG approval 8-2-2000; 4-13-2005 ATM by Art. 45, AG approval 10-19-2005; 10-23-2006 STM by Art. 16, AG approval 3-21-2007; 4-9-2007 ATM by Art. 28, AG approval 6-28-2007; 4-8-2008 ATM by Art. 52, AG approval 8-18-2008]

A. There shall not be permitted in or upon the areas adjacent to Nantucket Sound and the Atlantic Ocean between the water and the primary coastal bank or, in the absence of a bank, the line of upland vegetation, any dwelling, except dwellings which have continued in lawful existence since April 6, 1982.

B. Except as otherwise provided in Paragraphs C, D and E of this § 139-22, the construction of new docks and piers and wharves, the extension of existing docks, piers or wharves, and the addition of new appurtenant structures (defined as floats or ramps) is prohibited for shorefront land in all districts. Nothing in this § 139-22 shall prohibit nor regulate the repair, maintenance or like-kind replacement of any preexisting nonconforming dock, pier or wharf. **[Amended 6-5-2021ATM by Art. 62, AG approval 10-7-2021]**

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C. In the Harbor Overlay District and for commercial water-dependent uses only, (1) new docks, piers or wharves; (2) the extension of any lawfully existing docks, piers or wharves; and (3) the addition of new appurtenant structures to any lawfully existing docks, piers or wharves are permitted uses. **[Amended 6-5-2021ATM by Art. 62, AG approval 10-7-2021]**

D. Any proposed extension or reconfiguration of or addition of new appurtenant structures to a preexisting nonconforming dock, pier or wharf must be reviewed and approved by the special permit granting authority in accordance with § 139-33A(1). In addition to the findings required by that section, the special permit granting authority shall find that the proposed extension, reconfiguration or addition does not result in a net increase of the structure's existing footprint and is not more detrimental to the marine environment than the existing structure. Such applications shall be referred by the special permit granting authority to the Harbor Master and the Natural Resources Department, or its successor agency, for comment and recommendation in accordance with the procedures of § 139-30. **[Amended 6-5-2021ATM by Art. 62, AG approval 10-7-2021]**

E. In all districts new docks, wharves and piers of municipal, county, state, or federal agencies or public docks as defined below, and/or community docks serving areas that are not accessible by land-based transportation are permitted uses. The words "public docks" as used in this section shall be defined as a dock, pier or wharf that is open to the public at large, or at which services or goods for vessels are made available directly to the public.

§ 139-23. Site plan review (SPR). [Added 4-14-1997 ATM by Art. 49, AG approval 8-5-1997; amended 4-10-2000 ATM by Arts. 27, 46, AG approval 8-2-2000; 4-10-2002 ATM by Arts. 36, 41, AG approval 7-31-2002; 4-15-2003 ATM by Art. 26, AG approval 8-27-2003; 4-4-2006 ATM by Art. 43, AG approval 8-2-2006; 4-8-2008 ATM by Art. G1, AG approval 8-18-2008; 4-6-2015 ATM by Art. 67, AG approval 8-5-2015]

A. This Site Plan Review (SPR) Bylaw is enacted under authority of MGL c. 40A for the purposes of protecting the health, safety, convenience, and general welfare of the inhabitants of the Town of Nantucket, and to ensure compliance with this chapter. SPR is required prior to the issuance of any building or use permit, except as follows:

(1) The construction or alteration of any single-family or duplex dwelling, or building accessory to such dwelling, except when such dwellings are an integral part of workforce homeownership housing bonus lots or a workforce rental community application pursuant to § 139-8 of this chapter, major commercial development application pursuant to § 139-11 of this chapter, and except where such dwellings are located in the Moorlands Management District, § 139-13 of this chapter; **[Amended 11-9-2015 STM by Art. 2, AG approval 12-29-2015]**

(2) Any building used exclusively for agriculture, horticulture, viticulture, or floriculture;

(3) Any change of use which does not create an intensification of use requiring site plan modification, as determined by the Zoning Enforcement Officer;

(4) Any construction or alteration which has no effect on the footprint of the principal building or accessory structures, and does not add parking.

B. The special permit granting authority or a Zoning Enforcement Officer, where a special permit is not required, shall be the SPR authority. The review authority may accept plans prepared by a professional land surveyor, registered architect, landscape architect, or designer, as appropriate. All site plans shall be prepared at a scale appropriate to the size of the site, and the level of detail required.

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(1) The review authority may require the following information in connection with a SPR. In determining which requirements will apply to a specific application, the review authority shall consider the size and intensity of the use, and the unique circumstances of each application.

(a) Name of the project, locus, boundaries, North arrow, date, and scale of the plan;

(b) Key Map at a scale of 1" = 500', depicting the property with reference to surrounding properties, roads, and zoning district lines;

(c) Name and address of the owner of record, developer, and professional seal and certification of the certifying professional;

(d) Names and addresses of all owners of record of all abutting property owners;

(e) Existing lot lines, easements, and rights-of-way;

(f) The location, dimensions, and use of all existing and proposed structures within the site;

(g) Location and identification of all existing and proposed site improvements;

(h) General location and identity of all present and proposed utility systems;

(i) Erosion and sedimentation control measures;

(j) Existing and proposed topography at two-foot contour intervals;

(k) Flood Hazard (Overlay) District boundary, base flood elevation, and existing and proposed lowest floor elevation, pursuant to § 139-12A of this chapter, as applicable;

(l) Public Wellhead Recharge District boundary, pursuant to § 139-12B of this chapter, as applicable;

(m) The location of wetlands regulated pursuant to Section 136 of the Wetlands Code, as applicable (for informational purposes);

(n) A Zoning Table, demonstrating compliance with the dimensional and bulk requirements of this chapter;

(o) Abutting land uses and the location and use of structures and appurtenant improvements on abutting properties;

(p) Location and identification of all existing and proposed site improvements, including public and private ways, parking areas, driveways, sidewalks, ramps, curbs, including traffic directional arrows and paintstriping; fences and buffers for screening purposes; paths; outdoor lighting fixtures; walls; service areas; refuse, and other waste disposal containers; standard specifications and typical cross-sections shall be provided, as appropriate;

(q) A landscape plan depicting existing natural vegetation, including the identity and location of trees four inches in diameter or greater; the location, size, and type of all existing ornamental vegetation; and the location, size and type of proposed landscaping, conforming to the landscaping and buffering standards of this section;

(r) Building elevations and perspective drawings, as submitted or to be submitted to the Historic District Commission (for informational purposes).

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(2) Additional requirements for major SPR in connection with a major commercial development special permit or a use permit for a project within the Nantucket Cottage Hospital Overlay District (NCHOD) where expansion of the standards established in § 139-16 is requested shall include the following information:

(a) Storm drainage system details, including existing and proposed stormwater drainage systems and associated storm drainage calculations;

(b) A traffic study, prepared by a professional engineer specializing in traffic analysis, identifying internal vehicular circulation patterns; estimated daily and peak-hour vehicle trips, generated by the existing use (if applicable), or from the proposed use of the site; the measured daily and peak-hour traffic flows, both weekday and weekend (non-holiday), measured during the period between June 15 and September 15, on public and private roads and key intersections expected to be impacted by the project; proposed composite daily and peak-hour traffic on public and private roads and key intersections; a documentation of impacts on level of service; and suggested remedial measures to mitigate the expected impacts of the proposed development.

C. Waiver of required contents. Any applicant for SPR may request in writing a waiver of any requirements of § 139-23B. The review authority shall document their reasons for approving or denying each waiver, and such waivers shall be approved by a majority vote except in the case of review by the ZEO.

D. Site plan review procedures.

(1) Any prospective applicant may arrange for a pre-application conference with the professional staff of each review authority. One or more coordinated review meetings including staff from other applicable Town departments may be scheduled prior to application submission for the purpose of reviewing alternative schematic plans, and to give technical feedback before the applicant makes a significant investment in the project. The prospective applicant may review schematic plans with the review authority on an informal basis.

(2) An applicant for a site plan review shall submit to the review authority copies of a site plan containing the information required by the review authority, together with an application form and fee prescribed by the review authority.

(3) Any application for which the review authority is the Zoning Enforcement Officer, shall be acted upon within 10 days, exclusive of Saturdays, Sundays, and legal holidays. Applications for which the review authority is the special permit granting authority shall be acted upon concurrently within the time frame prescribed by the Board's special permit procedures.

(4) The review authority may request a report from other boards, commissions, or departments. Failure of any board, commission, or department to submit such report within 15 days of the date of the request shall not be cause for denial of the application.

E. The review authority for SPR shall take into consideration the reasonable fulfillment of the purpose of this subsection. The special permit granting authority shall also consider the following review objectives:

(1) Protection of public amenities and abutting properties through the mitigation of any detrimental impacts of any proposed use;

(2) Protection of unique, natural, scenic, or historic features of the site, and the minimization of the

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obstruction of scenic views, where applicable;

(3) Safety and convenience of pedestrian and vehicular movement within the site, and in relation to rights-of-way and properties in proximity to the site;

(4) Adequacy of proposed sewage and refuse disposal, and drainage of surface and subsurface water;

(5) Adequacy of off-street parking and loading;

(6) Minimization of traffic and safety impacts upon public and private rights-of-way;

(7) Adequacy of Town services and infrastructure.

F. Performance standards. In order to receive site plan review approval, compliance with the following performance standards shall be demonstrated:

(1) To the extent feasible, access to the site shall be provided utilizing a common driveway or a side street.

(2) Driveway accesses shall be limited to the minimum width necessary for safe entering and exiting, and shall be designed to provide adequate sight distances.

(3) The project design shall ensure safe pedestrian and vehicular circulation within the site.

(4) The special permit granting authority may require that a traffic mitigation plan be submitted, which addresses the traffic impacts of a project through alternative physical layouts, staggered employee work schedules; public transit incentive programs for both employees and customers; or other innovative means of reducing traffic impacts.

(5) Sidewalks and/or bicycle paths may be required by the special permit granting authority.

(6) Parking areas shall be designed to reduce their visual impact from public and private rights-of-way.

(7) The special permit granting authority may, at its discretion, require enhanced landscaping features based on a determination that additional landscaping is necessary to protect abutting properties and public and private roads from incompatible development.

(8) All stormwater runoff from impervious surfaces shall be recharged on-site, unless, during the course of site plan review, it is determined by the review authority that recharge is infeasible or is undesirable because of risks to water quality from such recharge.

(9) Collection systems for stormwater runoff shall be designed for at least a twenty-five-year storm.

(10) The erosion and sedimentation control plan shall be designed to protect drainage systems, surface waters, public and private roads, and abutting properties from site-generated erosion and sedimentation.

(11) Utilities shall be installed underground where physically and environmentally feasible. Any aboveground improvements ancillary to utility services to a site shall be depicted on the plan, and shall be properly screened.

(12) Outdoor storage areas must be identified on the plan and details concerning the screening of the storage area from public or private roads shall be provided.

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G. Before taking final action on a site plan, the review authority may require the applicant to make modifications to the proposed design of the project to ensure that the above-cited review objectives and performance standards have been met. The review authority shall take one of the following actions relative to the site plan:

(1) To approve the application, based on a finding that the proposed project as submitted or modified prior to action is in compliance with the review objectives and performance standards set forth in this section;

(2) To approve the application, subject to any reasonable conditions and modifications as the review authority may deem necessary to ensure conformity with the review objectives and performance standards of this section;

(3) To deny the application, based on finding that specific contents of the site plan are inadequate, or that the site plan is not in compliance with the review objectives or performance standards of this section. A denial of a minor site plan review shall occur only upon a determination by the review authority that the effect of the development on the public interest is so intrusive that no reasonable conditions can be developed to avoid that effect.

H. Administration.

(1) Any SPR approval shall lapse within two years of the date of issuance unless a building permit has been issued in connection therewith, or, in the case of a site plan not requiring a building permit, the commencement of site improvements. The review authority may, by majority vote of its membership, vote to extend this deadline upon receipt of a written request from the applicant demonstrating just cause for such extension.

(2) A certificate of occupancy shall be issued only upon a determination that the site improvements required under the site plan approval have been completed. In the event that certain improvements have not been completed, the review authority may accept a guarantee equal to 120% of the cost to complete the remaining improvements. A certificate of occupancy may be issued upon the receipt of proof submitted by the review authority acknowledging the receipt of such guarantee. The guarantee shall be released by the review authority upon notice from the Zoning Enforcement Officer that the improvements have been completed in accordance with the approved plan.

(3) Where the provisions of this section might conflict with any other section of this chapter, including the requirements and guidelines for major commercial developments, the more stringent provisions shall apply.

I. Appeals. Any appeals from the decisions of the Zoning or Planning Boards, as review authorities for site plan reviews, shall be made in accordance with MGL c. 40A.

§ 139-24. Rate of development. [Amended 11-13-1990 STM by Art. 19, AG approval 3-19-1991; 4-12-1994 ATM by Art. 48, AG approval 4-29-1994; 4-14-1997 ATM by Art. 39, AG approval 8-5-1997; 4-10-2000 ATM by Art. 46, AG approval 8-2-2000; 10-10-2001 STM by Art. 4; 4-4-2006 ATM by Art. 44, AG approval 8-2-2006]

A. (Reserved)[36]

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36. Editor's Note: Former Subsection A, Phased development, expired on 12-31-2008, and was removed from the Code at the direction of the Town.

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B. Release of covenants. **[Amended 4-5-2014 ATM by Art. 68, AG approval 5-7-2014]**

(1) Covenants executed by persons to obtain a building permit for a dwelling as their Nantucket domicile during the five-year building "cap," or subject to rate of development provisions, formerly § 139-24A, both introduced to the Zoning Bylaw by 1981 ATM Articles 13 and 14 and during the building "cap" introduced to the Zoning Bylaw by 1997 ATM Article 39, as amended and all now expired, shall be released at any time upon application to the Zoning Enforcement Officer by the current owner of the lot on which the dwelling was or was to be built.

(2) The Zoning Enforcement Officer, to make of record the release of a covenant pursuant to this § 139-24, shall execute, acknowledge and deliver to such owner a statement of termination of such covenant in form suitable for recording or registration. Upon the recording or registration of such statement, that covenant shall be of no further force or effect and shall cease to burden such lot.

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ARTICLE V
Administration and Enforcement

§ 139-25. Enforcement, remedies, penalties.

A. Enforcement. This chapter shall be enforced by a Zoning Enforcement Officer appointed by the Town Manager. Said Zoning Enforcement Officer shall withhold a permit for erection, construction, alteration or moving of any building or structure if the building or structure, as erected, constructed, altered or moved, would be in violation of this chapter. No permit shall be granted for a new building or other structure or use of land which would be in violation of this chapter. **[Amended 4-6-2015 ATM by Art. 64, AG approval 8-5-2015**

B. Remedies.

(1) If the Zoning Enforcement Officer is requested, in writing, to enforce this chapter against any person allegedly in violation of the same and the Zoning Enforcement Officer declines to act, said Zoning Enforcement Officer shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefor, within 14 days of receipt of such request.

(2) A stop order shall be issued for any violation of the provisions of this chapter in unauthorized sale or lease; construction in deviation from approved permits; subsequent actions contrary to the conditions of, or the activities and uses permitted by approved permits; failure to adequately maintain common open space; or inadequate or insufficient construction of improvements.

(3) A stop order shall be issued by the Zoning Enforcement Officer and delivered to the owner of any property or his agent. Delivery shall be construed to include mailing of such order, postage prepaid, to said owner or posting on the property. Copies of such order shall be maintained by the Town. The stop order shall be in writing and shall state the nature of the violation and conditions under which work or use may continue.

(a) A time limit, not to exceed five days, shall be permitted to allow for the necessary correction of the violation.

(b) Any person who shall continue in violation of this stop order shall be in violation of this chapter and shall be subject to the enforcement provisions of this chapter. The failure of the Town to obtain a stop order for any reason whatsoever shall not be interpreted as an estoppel against the Town from pursuing any other legal remedy permitted under the law.

C. Penalty.

(1) Any person violating any of the provisions of this chapter may be fined not more than $300 per violation, provided that each day such violation continues shall constitute a separate offense. **[Amended 4-4-2006 ATM by Art. 50, AG approval 8-2-2006]**

(2) No action, suit or proceeding shall be maintained in any court, nor any administrative or other action taken to recover a fine or damages or to compel the removal, alteration or relocation of any structure or part of a structure or alteration of a structure by reason of any violation of this chapter except in accordance with the provision of this § 139-25; provided, however, that if any real property has been improved and used in accordance with the terms of the original building permit issued by the Building Inspector, no action, criminal or civil, the effect or purpose of which is to compel the abandonment, limitation or modification of the use allowed by said permit or the removal, alteration or relocation of any structure erected in reliance upon said

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permit by reason of any alleged violation of the provisions of this chapter shall be maintained, unless such action, suit or proceeding is commenced and notice thereof recorded in the Nantucket County Registry of Deeds within six years next after the commencement of the alleged violation of law. Such notice shall include the names of one or more of the owners of record, the name of the person initiating the action and adequate identification of the structure and the alleged violation.

(3) No action, criminal or civil, the effect or purpose of which is to compel the removal, alteration or relocation of any structure by reason of any alleged violations of the provisions of this chapter, or the conditions of any variance or special permit granted by a permit granting authority, shall be maintained unless such action, suit or proceeding is commenced and notice thereof is recorded in the Registry of Deeds of Nantucket County within 10 years next after the commencement of the alleged violation.

D. Any Massachusetts state court of competent jurisdiction may enforce the provisions of this chapter and may restrain, by injunction, violations thereof. **[Amended 4-4-2006 ATM by Art. 50, AG approval 8-2-2006]**

§ 139-26. Issuance of building and use permits.

A. No building or structure shall be used, erected, constructed, relocated, added to or otherwise subjected to alteration, or demolished without a building or use permit having been issued by the Building Commissioner or Local Inspector for any use or structure. No lot shall be changed from its use preexisting the July 27, 1972, effective date of this chapter, except to its natural condition allowed by § 139-7A(5) above, without a use permit or a building permit permitting such use. No such permit shall be issued until such construction, erection, relocation, addition, alteration, demolition or use, as proposed, shall comply in all respects with the provisions of this chapter as determined by a Zoning Enforcement Officer or with a decision rendered by the Board of Appeals, the Planning Board, or the courts in the case of appeals. **[Amended 4-14-1997 ATM by Art. 40, AG approval 8-5-19974-10-2000 ATM by Art. 46, AG approval 8-2-2000; 6-25-2020ATM by Art. 51, AG approval 10-27-2020]**

(1) Demolition delay.

(a) Statement of purpose. The purpose of this section is to establish a predictable process for reviewing requests to demolish residential structures in order to:

[1] Establish an appropriate waiting period during which the Town and the applicant can propose and consider alternatives to the demolition of a building of residential value;

[2] Minimize the quantity of demolition debris ending up in the landfill;

[3] Create an incentive for reuse of residential structures;

[4] Give interested parties an opportunity to acquire reusable residential structures.

(b) Buildings subject to demolition delay. All residential structures are subject to review by the Building Commissioner, Local Inspector, or a registered design professional for the purpose of determining whether such buildings have any residential reuse potential.

(c) Issuance of demolition permit. The requirements set forth in this section are in addition to, and not in lieu of, the requirements of any other codes, ordinances, statutes, or regulations applicable to the demolition of buildings. No demolition permit shall be issued for a

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building that is subject to review, pursuant to Subsection A(1)(b) above, unless:

[1] It is determined that demolition is necessary, pursuant to Subsection A(1)(d) below.

[2] It is determined that said building has no residential reuse potential due to the existing condition of the structure or physical barriers to moving the structure such as significant trees, bridges, etc.

[3] The demolition delay period set forth in Subsection A(1)(f) below has expired.

(d) Required demolition or repair.

[1] Demolition. Nothing in this section shall restrict any authority in the general laws for the Building Commissioner or Building Inspector to order the building owner, or Town, to demolish a building at any time if it is determined that the condition of a building or part thereof presents an imminent and substantial danger to the public health or safety.

[2] Repair. Nothing in this section shall restrict any authority in the general laws for the Building Commissioner or Building Inspector to require the applicant to take reasonable action to prevent the need for required demolition, which may include securing the building and making it safe so that it does not present an imminent and substantial danger to the public.

(e) Issuance of building, use, or occupancy permit.

[1] If it has been determined that a building has re-use potential pursuant to Subsection A(1)(b) above, no building permits shall be issued for the erection of a new building on the site of such building subject to review before issuing a demolition permit for such building subject to review in compliance with this section.

[2] If it has been determined that a building has been voluntarily demolished in violation of this section, no building permits shall be issued for new construction, or any use or occupancy permit for any use other than a park or recreational open space, with respect to the premises of such building for a period of two years after the date of the determination. As used herein, "premises" includes the parcel of land upon which the demolished building was located and all abutting parcels under common ownership or control.

(f) Procedure.

[1] A request for review of reuse potential pursuant to this section shall be made to the Building Commissioner or Local Inspector. The request shall be made by letter, email or any other method acceptable to the building official.

[2] (Reserved)

[3] (Reserved)

[4] After its receipt of an application, pursuant to this Subsection A(1)(f), the following determinations shall be made:

[a] Whether immediate demolition is required pursuant to Subsection A(1)(d); and

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[b] Whether said structure has any residential reuse potential pursuant to Subsection A(1)(c)[2].

[5] A determination shall be made within 20 days after the request. If it is determined that the structure does not require immediate demolition and that it does have reuse potential the applicant shall place a public notice in a local newspaper.

[a] Contents of public notice.

> Subject to the Chapter 139 Section 26A(1) of the Code of the Town of Nantucket (the so-called "demolition delay bylaw"), a house located at INSERT ADDRESS is being made available to any interested party subject to the ability to move the structure within 60 days from the date of this publication, in addition to meeting any conditions imposed by the current owner. A letter of interest must be submitted to INSERT OWNER/ CONTACT ADDRESS AND EMAIL with a copy provided to the Town of Nantucket Building Commissioner at 2 Fairgrounds Road or by e-mail at INSERT BUILDING COMMISSIONER E-MAIL within 30 days from the date of this publication. Letters of interest received after 30 days may be considered at the discretion of the property owner.

[6] A published copy of said notice shall be presented to the Building Department. From the date of publication of said notice, any interested parties shall have 30 days to respond in writing. If any bona fide letters of interest, as determined by the Building Commissioner or Local Inspector, are received within the thirty-day period no demolition permit shall be issued for a period of 30 days thereafter.

[7] If no bona fide letters of interest are received within the thirty-day period, a demolition permit may be issued.

B. Form of application. The application for a building or use permit shall be submitted in such form as shall be described by the Building Inspector and shall be accompanied by the required fee as hereinafter prescribed. Application for a permit shall be made by the owner or lessee of any building or structure or the agent of either. The application for the permit shall be accompanied by a plot plan of the proposed building, structure or use drawn to scale with sufficient clarity to show the nature and character of the work to be performed, including off-street parking and loading space, if required, the location of new and existing lot lines.

C. Accompanying documents. The application for a building or use permit shall be accompanied by the following documents, if applicable:

(1) Certificate of appropriateness issued by the Nantucket Historic Districts Commission pursuant to Ch. 395, Acts of 1970, as amended.

(2) Sewer permit.

(a) For on-site septic systems issued by the Nantucket Board of Health pursuant to Title V, § 3.7, of the State Environmental Code.

(b) For hook-ups to the public sewage system issued by the Superintendent of the Nantucket Department of Public Works pursuant to the Wastewater Systems Regulations Governing the Use of Common Sewers, of the Town and County of Nantucket, as amended.

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(3) Order of conditions issued by the Nantucket Conservation Commission, pursuant to the State Wetland Protection Act (MGL c. 131, § 40), when a determination has been made that all or a portion of the property included in the building permit application is subject to the Wetland Protection Act. It is the responsibility of the applicant to file a request to determine applicability of the Wetland Protection Act if the applicant suspects that all or a portion of his property may be subject to the Act.

(4) Water well completion report establishing availability of water on property, if public water supply is unavailable.

(5) Certified copy of each Board of Appeals and Planning Board decision, including minor and major site plan review approvals, and of the plan approved by the Planning Board if the building permit is for a secondary dwelling, whichever may be relevant to the proposed project. **[Amended 4-14-1997 ATM by Art. 49, AG approval 8-5-1997]**

D. Issuance of permits. Upon receiving the application, the Building Inspector shall examine the same within a reasonable time after filing. The Zoning Enforcement Officer shall provide the Building Commissioner with a certificate of compliance with this chapter. If the application does not conform to the provisions of all pertinent local laws, the Building Commissioner shall reject such application in writing, stating the reasons therefor, within 30 days of the submission of a complete application. **[Amended 4-10-2000 ATM by Art. 46, AG approval 8-2-2000]**

(1) He shall inform the applicant of his right of appeal to the Board of Appeals in the event such application is rejected.

(2) If satisfied that the proposed work and/or use conforms to the provisions of this chapter and all laws and ordinances applicable thereto, he shall issue a building or use permit thereto, within 30 days of the submission of a complete application.

E. Any permit issued shall be deemed abandoned and invalid unless the work authorized by it shall have been commenced within six months after its issuance; however, for cause, one or more extensions of time, for periods not exceeding six months each, may be granted in writing by the Inspector of Buildings. Work under such permit, in the opinion of the Inspector of Buildings, must proceed in good faith continuously to completion so far as is reasonably practicable under the circumstances.

F. Revocation of permits. The Building Inspector may revoke any permit issued under the provisions of this chapter in case of any false statement or misrepresentation of fact in the application on which the permit was based or for any other cause set forth in this chapter.

G. Posting of permit. A true copy of a permit placard issued to the applicant with the permit shall be kept on the site of operations open to public inspection during the entire time of prosecution of the work or use and until the completion of the same as defined on the application.

H. Temporary permit. A temporary permit may, upon written request of an applicant, be authorized by a favorable vote of at least four members of the Board of Appeals for a nonconforming structure or use which the Board of Appeals finds necessary to promote the proper development of the community, provided that such nonconforming structure or use shall be completely removed upon expiration of the permit (unless previously made conforming or validated) without cost to the Town (unless the Town is the applicant). Such permit may be renewed annually for an aggregate period not exceeding three years.

I. Payment of fees. No building or use permit shall be issued until the fees prescribed by the Select

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Board shall be paid to the Building Inspector. **[Amended 6-25-2020ATM by Art. 70, approved 10-27-2020]**

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.

§ 139-27. (Reserved)

§ 139-28. Occupancy permits.

A. Permanent occupancy.

(1) No premises and no building or structure erected, altered or in any way changed as to construction or use, under a permit or otherwise, shall be occupied or used without an occupancy permit signed by the Building Inspector. Such permit shall not be issued until the premises, building or structure, and its proposed use and accessory uses, comply in all respects with this chapter. A record of all applications and occupancy permits shall be kept on file by the Building Inspector.

(2) An occupancy permit shall be conditional on the maintenance of full compliance with the provisions of this chapter in effect at the time of the issuance and with any decision of, or variance or special permit granted by the Board of Appeals or the Planning Board, and shall lapse if such compliance fails.

(3) No occupancy permit shall be issued unless and until the Building Inspector receives a written certification by the Nantucket Historic District Commission that:

(a) Such building or structure has been constructed, moved, altered, or added to in compliance with the certificate of appropriateness issued by the Commission for such building or structure; or

(b) A certificate of nonapplicability has been issued by the Commission for such building or structure.

B. Application; notification; as-built plot plan. Applications for occupancy permits shall be filed with the applications for building permits and shall be allowed or denied in writing, including the cause of the action taken, within seven days after the Building Inspector has been notified in writing that a construction or alteration of such building or structure has been completed. Said notification shall be accompanied by the following:

(1) A plot plan showing the precise location of all structures or buildings constructed, moved, altered or added to as a result of the building permit.

(a) The as-built plot plan shall be drawn to scale and shall be signed and sealed by a registered surveyor or engineer.

(b) In order to minimize the cost to the applicant for preparing an as-built plot plan, the applicant may resubmit either his original plot plan or his on-site sewage permit amended, if needed, with a statement by a registered surveyor or engineer affixed thereto certifying the location of the finally constructed improvements on the lot.[37]

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37. Editor's Note: Former Subsection B(1)(c), regarding plot plans for buildings erected after 1990, which immediately followed this subsection, was repealed 4-12-2004 ATM by Art. 40, AG approval 9-3-2004.

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(2) A written certification by the Nantucket Historic District Commission that:

(a) Such buildings or structures have been constructed, moved, altered, or added to in compliance with the certificates of appropriateness issued for such buildings or structures; or

(b) Certificates of nonapplicability have been issued by the Commission for such buildings or structures; provided, however, that:

(c) The Historic District Commission or its designee shall issue said certification within five working days of the receipt of a written request to do so; failure to issue a certification within this period shall be deemed approval thereof.

C. Temporary occupancy. For use and occupancy of any building or structure, or part thereof, during a period of construction or alteration, the Building Inspector may issue temporary certificates for periods not exceeding six months.

§ 139-29. Zoning Board of Appeals.

A. Membership. The Select Board shall appoint the members of the Board of Appeals, both regular and associate or alternate. The Board of Appeals shall consist of five members and three associate members serving staggered terms, respectively, of five and three years each. The Board of Appeals shall elect officers annually from its regular members, including a Chairman, a Vice Chairman and a Clerk. **[Amended 4-6-2011 ATM by Art. 64, AG approval 9-15-2011; 6-25-2020ATM by Art. 70, approved 10-27-2020]**

(1) Any member may be removed for cause by the Select Board upon written charges and after a public hearing.

(2) Vacancies shall be filled for unexpired terms in the same manner as in the case of original appointments.

(3) The Chairman of the Board of Appeals may designate any associate member to sit on the Board of Appeals 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, until said vacancy is filled as provided in this § 139-29A.

B. Board of Appeals rules. The Board of Appeals shall adopt rules, not inconsistent with the provisions of this chapter, for the conduct of its business pursuant to this chapter and shall file a copy of said rules with the Town Clerk.

(1) Meetings of the Board shall be at the call of the Chairman or when called in such other manner as the Board shall determine in its rules.

(2) (Reserved)[38]

(3) The Board of Appeals may adopt rules requiring applicants to pay fees into a special account, pursuant to MGL c. 44, § 53G, to be used for the engagement by the Board of consultants. **[Amended 5-5-1992 ATM by Art. 36, AG approval 8-3-1992]**

(4) In the event that the Board of Appeals has appointed a Zoning Administrator, said rules shall set forth the fact of such appointment, the identity of the persons from time to time appointed to

38. Editor's Note: Former Subsection B(2), regarding notice to abutting landowners, was repealed 4-2-2016 ATM by Art. 60, AG approval 7-12-2016.

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such position, the powers and duties delegated to such individual and any limitations thereon.

C. Zoning Administrator.

(1) The Board of Appeals may request that the Town Manager appoint a Zoning Administrator (not the Zoning Enforcement Officer). **[Amended 4-6-2015 ATM by Art. 64, AG approval 8-5-2015]**

(2) The Board of Appeals may delegate to said Zoning Administrator some of its powers and duties by a concurring vote of all except one of the five members of the Board of Appeals.

(3) Any person aggrieved by a decision or order of the Zoning Administrator, whether or not previously a party to the proceeding, or any municipal office or board, may appeal to the Board of Appeals within 30 days after the decision of the Zoning Administrator has been filed with the office of the Town Clerk.

(4) Any appeal, application or petition filed with said Zoning Administrator, as to which no decision has been issued within 35 days from the date of filing, shall be deemed denied as of the date ending such thirty-five-day period and shall be subject to appeal to the Board of Appeals.

(5) Any appeal to the Board of Appeals from the order or decision of the Zoning Administrator shall be taken within 30 days from the date of the order or decision or within 30 days from the date on which the appeal, application or petition shall have been deemed denied in accordance with § 139-29C(4) above, as the case may be.

(6) Any appeal pursuant to Subsection C(3) through (5) above shall be taken by having the petitioner file a notice of appeal, specifying the grounds thereof, with the Town Clerk.

(a) A copy of said notice, including the date and time of filing certified by the Town Clerk, shall be filed forthwith in the office of the Zoning Administrator and, in the case of an appeal under § 139-31A and B below, with the officer whose decision was the subject of the initial appeal to the Zoning Administrator.

(b) The Zoning Administrator shall forthwith transmit to the Board of Appeals all documents and papers constituting the case in which the appeal is taken.

D. (Reserved)[39]

E. Board of Appeals powers.

(1) The Board of Appeals shall have the following powers:

(a) To hear and decide special permits, and special permits with major site plan review, with those exceptions noted below in § 139-30A as to which the Planning Board is the special permit granting authority. **[Added 4-14-1997 ATM by Art. 49, AG approval 8-5-1997]**

(b) To hear and decide appeals from decisions of the Building Inspector.

(c) To hear and decide petitions for variances.

(d) To hear and decide appeals from decisions of the Zoning Enforcement Officer. **[Amended 4-10-2000 ATM by Art. 46, AG approval 8-2-2000]**

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39. Editor's Note: Former Subsection D, regarding employment of experts and clerical and other assistants, was repealed 4-2-2016 ATM by Art. 60, AG approval 7-12-2016.

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(e) To hear and decide appeals from decisions of the Zoning Administrator. **[Amended 4-6-2015 ATM by Art. 64, AG approval 8-5-2015[40]]**

(2) In exercising its power, the Board of Appeals may, in conformity with the provisions of this chapter, make orders or decisions, reverse or affirm in whole or in part, or modify any order or decision, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.

§ 139-30. Special permits.

A. The special permit granting authority shall be the Board of Appeals for all special permits, except those special permits for which the Planning Board is specifically designated by any provision of this chapter. In instances where any portion of a project involves a special permit application to the Planning Board for an apartment, apartment building, elder housing facility, medical marijuana treatment center, recreational marijuana establishment, neighborhood employee housing, secondary dwelling, or tertiary dwelling all pursuant to § 139-2, business commercial, commercial industrial, and industrial uses as categorized in the "Use Chart" pursuant to § 139-7A, residential development options pursuant to § 139-8, and for certain uses in the Public Wellhead Recharge District pursuant to § 139-12B, the Planning Board shall serve as the special permit granting authority for all other special permits required in connection with such project. **[Amended 4-14-1997 ATM by Art. 49, AG approval 8-5-1997; 4-9-2001 ATM by Art. 28, AG approval 8-2-2001; 10-10-2001 STM by Art. 5, AG approval 1-24-2002; 4-15-2003 ATM by Art. 35, AG approval 8-27-2003; 4-13-2005 ATM by Art. 47, AG approval 8-5-2005; 4-6-2011 ATM by Art. 64, AG approval 9-15-2011; 4-5-2014 ATM by Art. 68, AG approval 5-7-2014; 4-6-2015 ATM by Art. 68, AG approval 8-5-2015; 4-2-2016 ATM by Art. 58, AG approval 7-12-2016; 11-6-2017 STM by Art. 19, AG approval 2-26-2018]**

(1) The special permit granting authority shall issue special permits for structures and uses which are in harmony with the general purpose and intent of this chapter subject to the provisions of such chapter.

(2) Such permits may impose conditions, safeguards and limitations intended to ensure that the use or structure is in harmony with the general purpose and intent of this chapter.

B. Application for special permit.

(1) Each application for a special permit shall be filed by the petitioner or applicant with the Town Clerk.

(2) A copy of the application, including the date and time of filing certified by the Town Clerk, shall be filed forthwith by the petitioner with the special permit granting authority.

(3) The special permit granting authority shall adopt and, from time to time, amend rules relative to the form of the application and the issuance of special permits and shall file a copy of said rules in the office of the Town Clerk. Such rules shall prescribe the size, form, contents, style and number of copies of plans and specifications and the procedure for the submission and approval of such permits.

(4) Any application for a special permit which has been transmitted to the special permit granting

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40. Editor's Note: This enactment also repealed former Subsection E(1)(f), granting authority to the Chair to administer oaths, summon witnesses, and request evidence.

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authority may be withdrawn without prejudice by the petitioner prior to the publication of the notice of a public hearing thereon. Thereafter, an application can be withdrawn without prejudice only with the approval of the special permit granting authority.

C. Public hearing.

(1) A public hearing on the application for a special permit shall be held within 65 days from the date of filing the application with the Town Clerk.

(2) Notice of said hearing shall be given as provided in MGL c. 40A, § 11, and in § 139-29B(2) above.

D. Review by other agencies.

(1) Applications for special permits may be referred by the special permit granting authority to any Nantucket boards, commissions, departments, workgroups, and officers for their review and comment. **[Amended 4-6-2011 ATM by Art. 64, AG approval 9-15-2011]**

(2) Any such reviewing party shall make such recommendations as it deems appropriate and shall send copies thereof to the special permit granting authority and to the applicant; provided, however, that failure of any such board or agency to make recommendations within 35 days of receipt by such board or agency of the application shall be deemed lack of opposition thereto.

(3) Applications for special permits before the Board of Appeals, together with supporting materials, shall be submitted by the Board of Appeals, one copy to the Planning Board and one to the Zoning Enforcement Officer for review and comment forthwith upon receipt of the application. **[Amended 4-10-2000 ATM by Art. 46, AG approval 8-2-2000]**

E. Action by the Board of Appeals or Planning Board.

(1) The special permit granting authority shall approve, conditionally approve or disapprove applications for special permits within 90 days following the public hearing held pursuant to Subsection C above.

(2) The required time limits for such public hearing and for the action required in Subsection E(1) above may be extended by written agreement between the petitioner and the special permit granting authority. A copy of such agreement shall be filed in the office of the Town Clerk.

(3) Special permits issued by the special permit granting authority shall require the favorable vote of at least four members.

(4) The special permit granting authority shall cause to be made a detailed record of its proceedings, indicating the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reason for its decision and its actions.

(5) Copies of the decision made of record pursuant to Subsection E(4) above shall be filed within 14 days in the office of the Town Clerk, together with a notice of the decision, and shall be deemed a public record.

(6) Notice of the decision shall be mailed forthwith to the petitioner, to the parties in interest designated in MGL c. 40A, § 11, and to persons included pursuant to § 139-29B(2) above, and to any person present at the hearing who requested that notice be sent to him or her and stated the address to which such notice was to be sent. **[Amended 4-15-2003 ATM by Art. 26, AG approval 8-27-2003]**

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(7) Each such notice shall specify that appeals, if any, shall be made pursuant to MGL c. 40A, § 17, and shall be filed within 20 days after the date of filin such notice of decision in the office of the Town Clerk.

(8) A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the Town Clerk that 20 days have elapsed after the decision has been filed in the office of the Town Clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit accompanied by the certification of the Town Clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for Nantucket County and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the owner or applicant. **[Amended 6-25-2020ATM by Art. 51; AG approval 10-27-2020]**

F. Upon failure to act.

(1) Failure by the special permit granting authority to take final action within said 90 days or extended time, if applicable, shall be deemed to be a grant of the special permit.

(2) The petitioner who seeks such approval by reason of the failure of the special permit granting authority to act within such time prescribed shall notify the Town Clerk, in writing, within 14 days from the expiration of said 90 days or extended time, if applicable, of such approval and that notice has been sent by the petitioner to the parties in interest.

(3) The petitioner shall send such notice by mail to parties in interest and to those specified in § 139-29B(2), and each such notice shall specify that appeals, if any, shall be made pursuant to MGL c. 40A, § 17, and shall be filed within 20 days after the date the Town Clerk received such written notice from the petitioner that the special permit granting authority failed to act within the time prescribed. **[Amended 4-15-2003 ATM by Art. 26, AG approval 8-27-2003]**

(4) After the expiration of 20 days without notice of appeal to the Superior Court pursuant to § 139-30F(3) or, if appeal has been taken, after receipt of certified records of the Superior Court indicating such approval by reason of the failure of the special permit granting authority to act has become final, the Town Clerk shall:

(a) Issue a certificate stating the date of approval, the fact that the special permit granting authority failed to take final action and that the approval resulting from such failure has become final.

(b) Such certificate shall be forwarded to the appellant.

(5) If a special permit has been approved by reason of the failure of the special permit granting authority to act thereon within the time prescribed in § 139-30F above, it shall not take effect until a copy of the application for special permit accompanied by the certification of the Town Clerk stating the fact that:

(a) The special permit granting authority failed to act within the time prescribed; and

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(b) No court appeal has been filed and that the grant of the application or petition resulting from such failure to act has become final; or

(c) If a court appeal has been filed, it has been decided finally and favorably to the applicant; is recorded in the Nantucket Registry of Deeds and indexed in the grantor index under the name of the owner of record or is registered and noted on the owner's certificate of title. (The fee for recording or registering shall be paid by the owner or applicant.)

G. Appeal to courts. Any person aggrieved by a decision of the Board of Appeals or Planning Board (or by their failure to take final action concerning any application for a special permit within the prescribed time), whether or not previously a party to the proceeding, or any municipal officer or board, may appeal to the Superior Court for Nantucket County, or to the Land Court under MGL c. 240, § 14A, by bringing an action within 20 days after the decision has been filed in the office of the Town Clerk (or after the date the Town Clerk received written notice from the petitioner that the special permit granting authority failed to act within the prescribed time). Procedures for appealing to the courts are found in the State Zoning Act, MGL c. 40A, § 17.

H. Effect of zoning amendments on special permits issued. Construction or operation under a special permit shall conform to any subsequent amendment of this chapter unless the use or construction is commenced within a period of not more than 12 months after the issuance of the special permit and, in cases involving construction, is continued through to completion as continuously and expeditiously as is reasonable. **[Amended 11-6-2017 STM by Art. 17, AG approval 2-26-2018; 6-5-2021ATM by Art. 47, AG approval 10-7-2021]**

I. Expiration of special permits. Special permits shall expire after three years from the date of issuance if a substantial use thereof has not commenced, except for good cause, or, in the case of construction, if construction has not begun by such date except for good cause. Such expiration date shall be automatically extended to include time required to pursue or await the determination of an appeal from the action of the special permit granting authority. **[Amended 5-7-1991 ATM by Art. 32, AG approval 9-6-1991; 11-6-2017 STM by Art. 17, AG approval 2-26-2018]**

J. (Reserved)[41]

K. Special permit rehearing limit. No special permit which has been unfavorably and finally acted upon by the Board of Appeals shall be acted favorably upon within two years after the date of final unfavorable action unless the Board of Appeals finds, by the favorable vote of at least four members, specific and material changes in the conditions upon which the previous unfavorable action was based and describes such changes in the record of its proceedings and unless all but one of the members of the Planning Board consent thereto and after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered.

§ 139-31. Appeals.

A. An appeal to the Board of Appeals (or to the Zoning Administrator if authorized to hear such appeal) may be taken: **[Amended 4-10-2000 ATM by Art. 46, AG approval 8-2-2000]**

(1) By any person aggrieved by reason of his inability to obtain a permit or enforcement action from the Building Commissioner [see § 139-25B(1) above], the Zoning Enforcement Officer, or from any other administrative officer under the provisions of this chapter; or

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41. Editor's Note: Former Subsection J, Alternate members of Planning Board, as amended, was repealed 4-2-2016 ATM by Art. 60, AG approval 7-12-2016.

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(2) By the Nantucket Planning and Economic Development Commission or by any person, including an officer or board of the Town, aggrieved by an order or decision of the Building Commissioner, Zoning Enforcement Officer, or other administrative official, in violation of any provision of this chapter or of the Zoning Act of Massachusetts, MGL c. 40A.

B. Filing of notice of appeal.

(1) Any appeals under this § 139-31 to the Board of Appeals (or the Zoning Administrator if authorized to hear such appeal) shall be taken within 30 days from the date of the order or decision which is being appealed.

(2) The appellant or petitioner shall file a notice of appeal, specifying the grounds thereof, with the Town Clerk, and a copy of said notice, including the date and time of filing certified by the Town Clerk, shall be filed forthwith by the petitioner with the officer or board whose order or decision is being appealed, and with the Board of Appeals, specifying in the notice the grounds for such appeal.

(3) Such officer or board (e.g., the Building Commissioner) shall forthwith transmit to the Board of Appeals (or to the Zoning Administrator if authorized) all documents and papers, or true copies thereof, constituting the record of the case in which the appeal is taken.

(4) The Board of Appeals shall adopt and, from time to time, amend rules relative to the form of the notice of appeal and its decision thereon and shall file a copy of said rules in the office of the Town Clerk.

(a) Such rules shall prescribe the size, form, contents, style and number of copies of papers including the record appealed from and the procedure for the submission and approval of such appeal.

C. Public hearing on appeals.

(1) The Board of Appeals shall hold a public hearing on any appeal within 65 days from the receipt by the Board of Appeals of notice of such appeal.

(2) The Board of Appeals shall cause notice of such hearing to be published and sent to parties in interest as provided in MGL c. 40A, § 11 and in § 139-29B(2) above.

D. Review by other agencies. The Board of Appeals shall notify the Planning Board of each such appeal and may notify any other municipal agency or officer. The Planning Board may forward recommendations with respect to said appeal for the consideration of the Board of Appeals.

E. Action by the Board of Appeals.

(1) The decision of the Board of Appeals shall be made within 100 days after the date of filing of an appeal.

(2) The required time limits for a public hearing and said action may be extended by written agreement between the applicant and the Board of Appeals. A copy of such agreement shall be filed in the office of the Town Clerk.

(3) The concurring vote of at least four members of the Board of Appeals shall be necessary to reverse any order or decision of any administrative official under this chapter.

(4) The Board of Appeals shall cause to be made a detailed record of its proceedings, indicating the

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vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reason for its decision and its official actions.

(5) Copies of the decision made of record pursuant to Subsection E(4) above shall be filed within 14 days in the office of the Town Clerk, together with a notice of the decision, and shall be a public record.

(6) Notice of the decision shall be mailed forthwith to the petitioner, to the parties in interest designated in MGL c. 40A, § 11, and to persons included pursuant to § 139-29B(2) above, and to every person present at the hearing who requested that notice be sent to him or her and stated the address to which such notice was to be sent.

(7) Each such notice shall specify that appeals, if any, shall be made pursuant to MGL c. 40A, § 17, and shall be filed within 20 days after the date of filing such notice of decision in the office of the Town Clerk.

(8) No decision granting an appeal shall take effect until a copy of the decision has applied to it the certification of the Town Clerk that:

(a) Twenty days have elapsed after the decision has been filed in the office of the Town Clerk and no court appeal has been filed; or

(b) If such court appeal has been filed, it has been acted upon finally and favorably to the applicant, and the decision copy with such certification is recorded in the Nantucket Registry of Deeds and indexed in the grantor index under the name of the owner of record or is registered and noted on the owner's certificate of title. (The fee for recording or registering shall be paid by the owner or applicant.)

F. Upon failure to act.

(1) Failure by the Board of Appeals to act within said 100 days or extended time, if applicable, shall be deemed to be the grant of the appeal.

(2) The petitioner who seeks such approval by reason of the failure of the Board of Appeals to act within the time prescribed, shall notify the Town Clerk, in writing, within 14 days from the expiration of said 100 days or extended time, if applicable, of such approval and that notice has been sent by the petitioner to the parties in interest.

(3) The petitioner shall send such notice by mail to parties in interest and to those specified in § 139-29B(2), and each such notice shall specify that appeals, if any, shall be made pursuant to MGL c. 40A, § 17, and shall be filed within 20 days after the date the Town Clerk received such written notice from the petitioner that the Board of Appeals failed to act within the time prescribed.

(4) After the expiration of 20 days without notice of appeal to the Superior Court pursuant to § 139-31F(3) or, if appeal has been taken, after receipt of certified records of the Superior Court indicating such approval by reason of the failure of the Board of Appeals to act has become final, the Town Clerk shall issue a certificate stating the date of approval, the fact that the Board of Appeals failed to take final action and that the approval resulting from such failure has become final. Such certificate shall be forwarded to the appellant.

(5) If an appeal has been granted by reason of the failure of the Board of Appeals to act thereon within the time prescribed in § 139-31F above, it shall not take effect until a copy of the

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application for grant of an appeal accompanied by the certification of the Town Clerk stating the fact that:

(a) The Board of Appeals failed to act within the time prescribed; and

(b) No court appeal has been filed and that the grant of the application or petition resulting from such failure to act has become final; or

(c) If a court appeal has been filed, it has been decided finally and favorably to the applicant, is recorded in the Nantucket Registry of Deeds and indexed in the grantor index under the name of the owner of record or is registered and noted on the owner's certificate of title. (The fee for recording or registering shall be paid by the owner or applicant.)

G. Appeal to courts. Any person aggrieved by a decision of the Board of Appeals (or by its failure to take final action upon an appeal within the prescribed time), whether or not previously a party to the proceeding, or any municipal officer or board may appeal to the Superior Court for Nantucket County or to the Land Court under MGL c. 240, § 14A, by bringing an action within 20 days after the decision has been filed in the office of the Town Clerk (or after the date the Town Clerk received written notice from the petitioner that the Board of Appeals failed to act within the prescribed time). Procedures for appealing to the courts are found in the Zoning Act of Massachusetts, MGL c. 40A, § 17.

H. Appeal rehearing limit. No appeal which has been unfavorably and finally acted upon by the Board of Appeals shall be acted upon favorably within two years after the date of final unfavorable action, unless the Board of Appeals finds, by the favorable vote of at least four members, specific and material changes in the conditions upon which the previous unfavorable action was based and describes such changes in the record of its proceedings and unless all but one of the members of the Planning Board consent thereto and after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered.

§ 139-32. Variances.

A. The Board of Appeals shall have the power to grant upon appeal or upon petition, with respect to particular land or structures, a variance from the terms of this chapter where the Board of Appeals specifically finds that owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and the desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such bylaw.

B. Conditions and limitations upon variances.

(1) The Board of Appeals may impose conditions, safeguards and limitations, both of time and of use, including the continued existence of any particular structures but excluding any condition, safeguards or limitation based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner.

(2) No variance may authorize a use or activity not otherwise permitted in the zoning district in which the land or structure is located.

C. Filing of application for a variance.

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(1) A petition for a variance over which the Board of Appeals or the Zoning Administrator, as the case may be, exercises original jurisdiction shall be filed by the petitioner with the Town Clerk.

(2) A copy of said application or petition, including the date and time of filing certified by the Town Clerk, shall be transmitted forthwith by the petitioner to the Board of Appeals or to the Zoning Administrator.

(3) The Board of Appeals shall adopt and, from time to time, amend rules relative to the form of the application or petition and the grant of variances and shall file a copy of said rules in the office of the Town Clerk. Such rules shall prescribe the size, form, contents, style and number of copies of plans and specifications and the procedure for the submission and approval of such petitions.

(4) Any petition for a variance which has been transmitted to the Board of Appeals may be withdrawn without prejudice by the petitioner prior to the publication of the notice of a public hearing thereon. Thereafter, a petition can be withdrawn without prejudice only with the approval of the Board of Appeals.

D. Review by other agencies.

(1) Applications for variances may be referred by the Board of Appeals to any Nantucket boards, commissions, departments, workgroups, and officers for their review and comment. **[Amended 4-6-2011 ATM by Art. 64, AG approval 9-15-2011]**

(2) Any such reviewing party shall make such recommendations as it deems appropriate and shall send copies thereof to the Board of Appeals and to the applicant.

(3) Applications for variances before the Board of Appeals, together with supporting materials, shall be submitted by the Board of Appeals, one copy to the Planning Board, one copy to the Zoning Enforcement Officer for review and comment forthwith upon receipt of the application. **[Amended 4-10-2000 ATM by Art. 46, AG approval 8-2-2000]**

E. Public hearing for a variance.

(1) The Board of Appeals shall hold a public hearing on any application or petition for a variance within 65 days from the receipt by the Board of Appeals of notice pursuant to Subsection C(2) above of such petition.

(2) The Board of Appeals shall cause notice of such hearing to be published and sent to parties in interest as provided by the Zoning Act of Massachusetts, MGL c. 40A, § 11, and to others pursuant to § 139-29B(2) above. **[Amended 4-15-2003 ATM by Art. 26, AG approval 8-27-2003]**

F. Action on variances by Board of Appeals.

(1) The decision of the Board of Appeals shall be made within 100 days after the date of the filing of a petition.

(2) The required time limits for such public hearing and for the action required in Subsection F(1) above may be extended by written agreement between the petitioner and the Board of Appeals. A copy of such agreement shall be filed in the office of the Town Clerk.

(3) The concurring vote of four members of the Board of Appeals shall be necessary to effect any variance in the application of any zoning bylaw.

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(4) The Board of Appeals shall cause to be made a detailed record of its proceedings, indicating the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reason for its decision and its actions.

(5) Copies of the decision made of record pursuant to Subsection F(4) above shall be filed within 14 days in the office of the Town Clerk, together with a notice of the decision, and shall be deemed a public record.

(6) Notice of the decision shall be mailed forthwith to the petitioner, to the parties in interest designated in MGL c. 40A, § 11, and to persons included pursuant to § 139-29B(2) above, and to any person present at the hearing who requested that notice be sent to him or her and stated the address to which such notice was to be sent. **[Amended 4-15-2003 ATM by Art. 26, AG approval 8-27-2003]**

(7) Each such notice shall specify that appeals, if any, shall be made pursuant to MGL c. 40A, § 17, and shall be filed within 20 days after the date of filing such notice of decision in the office of the Town Clerk.

(8) No variance, or any extension, modification or renewal thereof, shall take effect until a copy of the decision shall have had affixed to it the certification of the Town Clerk that:

(a) Twenty days have elapsed after the decision has been filed in the office of the Town Clerk and no court appeal has been filed; or

(b) If such court appeal has been filed, it has been acted upon finally and favorably to the applicant, and the decision copy with such certification is recorded in the Nantucket Registry of Deeds and indexed in the grantor index under the name of the owner of record or is registered and noted on the owner's certificate of title. (The fee for recording or registering shall be paid by the owner or applicant.)

G. Upon failure to act.

(1) Failure by the Board of Appeals to take final action within said 100 days or extended time, if applicable, shall be deemed to be a grant of the petition. **[Amended 5-5-1992 ATM by Art. 36, AG approval 8-3-1992]**

(2) The petitioner who seeks such approval by reason of the failure of the Board of Appeals to act within such time prescribed shall notify the Town Clerk, in writing, within 14 days from the expiration of said 100 days or extended time, if applicable, of such approval and that notice has been sent by the petitioner to the parties in interest.

(3) The petitioner shall send such notice by mail to parties in interest and to those specified in § 139-29B(2), and each such notice shall specify that appeals, if any, shall be made pursuant to MGL c. 40A, § 17, and shall be filed within 20 days after the date the Town Clerk received such written notice from the petitioner that the Board of Appeals failed to act within the time prescribed. **[Amended 4-15-2003 ATM by Art. 26, AG approval 8-27-2003]**

(4) After the expiration of 20 days without notice of appeal to the Superior Court pursuant to § 139-32G(3) or, if appeal has been taken, after receipt of certified records of the Superior Court indicating such approval by reason of the failure of the Board of Appeals to act has become final, the Town Clerk shall issue a certificate stating the date of approval, the fact that the Board of Appeals failed to take final action and that the approval resulting from such failure has become final. Such certificate shall be forwarded to the appellant.

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(5) If a variance has been approved by reason of the failure of the Board of Appeals to act thereon within the time prescribed in § 139-32F above, it shall not take effect until a copy of the petition for the variance accompanied by the certification of the Town Clerk stating the fact that:

(a) The Board of Appeals failed to act within the time prescribed; and

(b) No court appeal has been filed, and that the grant of the petition resulting from such failure to act has become final; or

(c) If a court appeal has been filed, it has been decided finally and favorably to applicant, is recorded in the Nantucket Registry of Deeds and indexed in the grantor index under the name of the owner of record or is registered and noted on the owner's certificate of title. (The fee for recording or registering shall be paid by the owner or applicant.)

H. Appeal to courts. Any person aggrieved by a decision of the Board of Appeals (or by its failure to take final action upon an appeal within the prescribed time), whether or not previously a party to the proceeding, or any municipal officer or board may appeal to the Superior Court for Nantucket County or to the Land Court under MGL c. 240, § 14A, by bringing an action within 20 days after the decision has been filed in the office of the Town Clerk (or after the date the Town Clerk received written notice from the petitioner that the Board of Appeals failed to act within the prescribed time). Procedures for appealing to the courts are found in the Zoning Act of Massachusetts, MGL c. 40A, § 17.

I. Expiration of variances. Variances not exercised within one year of the date of grant shall lapse. Variances shall be renewable prior to expiration, as provided in MGL c. 40A, § 10, for a period not to exceed six months, without the filing of a new application and without a new public hearing and public notice. Any further renewal of a variance shall require a new application, public notice, and public hearing thereof. **[Amended 5-7-1991 ATM by Art. 31, AG approval 9-6-1991]**

J. Variance rehearing limit. No application for a variance which has been unfavorably and finally acted upon by the Board of Appeals shall be acted upon favorably within two years after the date of final unfavorable action unless said Board of Appeals finds by favorable vote of at least four members, specific and material changes in the conditions upon which the previous unfavorable action was based and describes such changes in the record of its proceedings and unless all but one of the members of the Planning Board consent thereto and after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered.

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ARTICLE VI
General Provisions

§ 139-33. Preexisting nonconforming uses, structures and lots.

A. This section shall apply to uses, structures, and lots that were either in existence prior to the adoption of the Zoning Bylaw or lawfully allowed or permitted at some point in time after the adoption of the Zoning Bylaw and no longer meet minimum zoning requirements or are now prohibited. If real property has been improved by the erection or alteration of one or more structures and the structures or alterations have been in existence for a period of at least 10 years and no notice of an action, suit or proceeding as to an alleged violation of this chapter or of an ordinance or bylaw adopted under this chapter has been recorded in the Registry of Deeds for the county or district in which the real estate is located or, in the case of registered land, has been filed in the Registry District in which the land is located within a period of 10 years from the date the structures were erected, then the structures shall be deemed, for zoning purposes, to be legally nonconforming structures subject to MGL c. 40A, § 6 and any other provisions of this bylaw relating to nonconforming structures. Further, a use of land and/or lots and construction of structures shall be exempt from this chapter provided that a building or special permit was issued before the first publication of notice of the public hearing to change zoning as it may apply, pursuant to MGL c. 40A, § 5, as may be amended from time to time. **[Amended 5-5-1992 ATM by Art. 36, AG approval 8-3-1992; 5-4-1993 ATM by Art. 47, AG approval 5-24-1993; 4-8-1996 ATM by Art. 40, AG approval 7-15-1996; 4-14-1997 ATM by Art. 46, AG approval 8-5-1997; 4-30-2003 ATM by Art. 52, AG approval 8-27-2003; 4-6-2011 ATM by Art. 64, AG approval 9-15-2011; 3-31-2012 ATM by Art. 56, AG approval 7-12-2012; 4-5-2014 ATM by Art. 64, AG approval 5-7-2014; 4-6-2015 ATM by Art. 64, AG approval 8-5-2015; 4-2-2016 ATM by Art. 60, AG approval 7-12-2016; 11-6-2017 STM by Art. 17, AG approval 2-26-2018]**

(1) Preexisting, nonconforming structures or uses may be extended, altered, or changed, provided that:

(a) The special permit granting authority finds that such extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure and/or use to the neighborhood. Where an existing structure violates a front, rear, or side yard setback distance, the special permit granting authority may issue a special permit to allow an extension, alteration, or change to the structure, provided that the nonconforming setback distance is not made more nonconforming and based upon a finding that the extension will not be substantially more detrimental to the neighborhood than the existing nonconformity; or

(b) The Zoning Administrator or the special permit granting authority finds that the alteration, extension, or change to a structure does not increase its nonconforming nature and does not create any new nonconformities. Where an existing structure violates a front, rear, or side yard setback distance, the Zoning Administrator may issue a permit allowing an extension, alteration, or change to the structure, provided that the nonconforming setback distance is not made more nonconforming and no new nonconformities are created; or

(c) A Zoning Enforcement Officer determines through a review of the building permit application that the extension, alteration, or change to any nonconforming structure is compliant with all dimensional requirements of this chapter and does not increase the nonconformity. **[Amended 11-6-2017 STM by Art. 19, AG approval 2-26-2018]**

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(2) An extension, alteration, or change to an existing structure or a new structure that will result in an increase in the pre-existing nonconforming ground cover ratio of a lot may be allowed through the issuance of a special permit, provided that the special permit granting authority makes the following findings:

(a) The increase in ground cover ratio will not be substantially more detrimental to the neighborhood than the existing nonconformity;

(b) The resulting ground cover ratio is consistent with the character of the surrounding neighborhood; and

(c) The extension, alteration, or change to the existing structure or the new structure is conforming to other dimensional requirements of this chapter.

(3) Preexisting, nonconforming lots may be increased in area or frontage through the addition of adjoining property without the need for any relief under this bylaw. Any other alteration to a preexisting, nonconforming lot that does not increase an existing or create a new nonconformity is allowed upon determination by the Zoning Administrator that such alteration will not be substantially more detrimental to the neighborhood. Lots created pursuant to MGL c. 41, § 81P, based upon the exception in the clause of MGL c. 41, § 81L for lots containing two or more structures that predate the adoption of subdivision control in the Town, shall have the same status as preexisting, nonconforming lots, and any structures thereon, which predate the adoption of subdivision control in the Town, shall have the status of preexisting nonconforming structures. The removal of structures to facilitate an alteration or change to an existing structure, the relocation of the structure upon the lot, or the construction of a new structure, shall not cause the lot to be merged with an abutting lot in common ownership, provided that the lot remains vacant for less than one year.

(4) Removal and reconstruction of any or all of the preexisting nonconforming structure(s), or any portion(s) thereof, in excess of the permitted ground cover ratio upon a lot, shall be allowed by special permit, provided that:

(a) Such special permit shall have been issued prior to the removal of the preexisting nonconforming structure(s), or any portion(s) thereof;

(b) (Reserved)

(c) All reconstructed structure(s), or portion(s) thereof, shall conform to all applicable front, rear and side yard setback requirements; unless relief is granted under separate provisions of this chapter; and

(d) The special permit granting authority shall have made the finding that the result of the proposed removal and reconstruction shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure and/or use.

B. Constructions or operations under a building permit, a site plan review, or a special permit shall conform to any subsequent amendment of this chapter: **[Amended 4-14-1997 ATM by Art. 49, AG approval 8-5-1997]**

(1) Unless the use or construction is commenced within a period of not more than 12 months after the issuance of the permit; and **[Amended 6-5-2021ATM by Art. 47, AG approval 10-7-2021]**

(2) In cases involving construction, unless such construction is continued through to completion as

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continuously and expeditiously as is reasonable.

C. Nonconforming uses and structures abandoned or not used for a period of three years shall not be reestablished.

(1) Any future use or structure shall conform with the requirements of this chapter.

D. Once changed to a conforming use, no structure or use shall be permitted to revert to a nonconforming use; provided, however, that:

(1) An accessory building which is accessory to a residential use and has no commercial use may be razed and reconstructed with substantially the same configuration, ground cover, siting and use.

E. Any increase in area, frontage, width, yard or depth requirements shall not prohibit an unimproved lot, which at the time of recording or endorsement of such lot, whichever occurred sooner, or at any time thereafter, was not held in common ownership with any adjoining land and conformed to then-existing Zoning Bylaw requirements, from being built upon for a conforming use or for single- and two-family purposes as provided by MGL c. 40A, § 6, as may be amended from time to time. **[Amended 5-5-1992 ATM by Art. 36, AG approval 8-3-1992; 4-12-1999 ATM by Art. 51, AG approval 8-10-1999; 4-6-2011 ATM by Art. 64, AG approval 9-15-2011; 3-31-2012 ATM by Art. 56, AG approval 7-12-2012; 4-5-2014 ATM by Art. 65, AG approval 5-7-2014]**

In addition, any increase in area, frontage, width, yard or depth requirements shall not prohibit an unimproved lot from being built upon, provided that at the time of such amendment, the lot had the benefit of a zoning protection period pursuant to MGL c. 40A, § 6 (5th par.), was dimensionally compliant pursuant to such protection, and was conveyed into separate ownership from adjoining land prior to the end of such zoning protection, and remained in separate ownership and control at all times since the expiration of such protection, and now has less than the present requirements of area or frontage and has a frontage of not less than 20 feet or the benefit of an appurtenant easement providing a means of access for vehicles and utilities to and from a public street, which access, in the opinion of the Planning Board, has sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed construction and for the installation of municipal services to serve the land in question and the buildings erected and to be erected thereon.

(1) For a lot within the provisions of this § 139-33E, the maximum ground cover upon such lot shall be:

(a) In the case of a lot containing less than 5,000 square feet, 30% of the area of the lot or the amount determined in accordance with the maximum ground cover ratio requirement for the zoning district in which the lot is situated, whichever is greater; or

(b) In the case of a lot containing at least 5,000 square feet, 1,500 square feet of ground cover or the amount determined in accordance with the maximum ground cover ratio requirement for the zoning district in which the lot is situated, whichever is greater. In the LUG-2 and LUG-3 Districts only, a lot containing at least 40,000 square feet shall be permitted 2,000 square feet of ground cover or the amount determined in accordance with the maximum ground cover ratio requirement for the zoning district in which the lot is situated, whichever is greater; and **[Amended 4-2-2016 ATM by Art. 60, AG approval 7-12-2016]**

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(2) For a lot within the provisions of this § 139-33E, the dimensional requirements of § 139-16A shall apply, except as follows:

(a) In the LUG-2 and LUG-3 Zoning Districts, the side and rear yard setbacks shall be 10 feet; and

(b) In the MMD Zoning District, the side and rear yard setbacks shall be 25 feet; and

F. (Reserved)[42]

G. (Reserved)[43]

H. (Reserved)[44]

I. (Reserved)[45]

J. (Reserved)[46]

K. (Reserved)[47]

L. If as a result of acquisition of property by the Commonwealth or any instrumentality thereof, including the Town of Nantucket, the County of Nantucket, the Nantucket Islands Land Bank (whether such acquisition is by eminent domain, gift, or deed for a public purpose for which property could be taken by eminent domain), a use, building, structure, lot, parking space, loading bay, landscaping or any other feature or attribute of property, no longer complies with this chapter, then, provided that such property and its use complied with this chapter or was legally nonconforming under this chapter prior to such acquisition, the portion, features, attributes and uses of the property remaining after such public acquisition shall be deemed to be legally nonconforming under this chapter. **[Added 4-10-1995 ATM by Art. 41, AG approval 5-22-1995]**

M. Disaster rebuild. Pre-existing non-conforming structures, damaged or destroyed by accidental cause, including fire, or otherwise damaged or destroyed without the consent of the owner, may be repaired or reconstructed, provided that: **[Added 4-8-2008 ATM by Art. 54, AG approval 8-18-2008]**

(1) The non-conforming nature of the repaired or reconstructed structure is not increased in any respect;

(2) The repaired or reconstructed structure shall be used in the same manner as the structure being replaced or otherwise used in compliance with the use limitations of the applicable zoning district; and

(3) A building permit for the repair or reconstruction shall be issued within two years from the date

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42. Editor's Note: Former Subsection F, which provided for a time limit on the applicability of increases in area, frontage, width, yard or depth requirements, was repealed 4-6-2011 ATM by Art. 64, AG approval 9-15-2011.

43. Editor's Note: Former Subsection G, Approval-required plans, as amended 5-7-1991 ATM by Art. 33, AG approval 9-6-1991, was repealed 4-6-2011 ATM by Art. 64, AG approval 9-15-2011.

44. Editor's Note: Former Subsection H, Approval-not-required ("ANR") plans, was repealed 4-6-2011 ATM by Art. 64, AG approval 9-15-2011.

45. Editor's Note: Former Subsection I, which included provisions on the effect of disapproval of a plan, was repealed 4-6-2011 ATM by Art. 64, AG approval 9-15-2011.

46. Editor's Note: Former Subsection J, which included provisions on lots subject to a matter of any appeal or any litigation, was repealed 4-6-2011 ATM by Art. 64, AG approval 9-15-2011.

47. Editor's Note: Former Subsection K, which included provisions on the waiver by the record owner of the land of certain provisions so that the provisions of the current Zoning Bylaw apply to the property, was repealed 4-6-2011 ATM by Art. 64, AG approval 9-15-2011.

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of the damage or destruction; time incurred in resolving an appeal or other court action necessary for issuance of a building permit shall not be counted as part of the two-year limit. The Zoning Board of Appeals may extend the two-year period for good cause, provided that a request has been filed prior to expiration of the time period outlined above.

§ 139-34. Amendments. [Amended 4-6-2011 ATM by Art. 64, AG approval 9-15-2011]

This chapter may be amended pursuant to MGL c. 39, § 10, and MGL c. 40A, § 5.

§ 139-35. Severability.

The provisions of this chapter are hereby declared to be severable and, if any provision or the application of such provision to any property, person or circumstance shall be determined to be invalid, such invalidity shall not be construed to affect the validity of any other provision hereof or the application of any provisions to any other property, person or circumstances. The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof.

§ 139-36. When effective.

The effective date of the adoption or amendment of this chapter shall be the date on which such adoption or amendment was voted upon by Town Meeting. If such adoption or amendment is subsequently disapproved, in whole or in part, by the Attorney General, the Zoning Bylaw as it would have read without the disapproved portion of the adoption or amendment so voted, shall be deemed to have continued in effect from the date of such vote.

§ 139-37. Temporary moratorium on recreational marijuana establishments. [Added 11-6-2017 STM by Art. 1, AG approval 2-26-2018]

A. Purpose. On November 8, 2016, the voters of the commonwealth approved a law regulating the cultivation, processing, distribution, possession and use of marijuana for recreational purposes (new MGL c. 94G, Regulation of the Use and Distribution of Marijuana Not Medically Prescribed). The law, which allows certain personal use and possession of marijuana, took effect on December 15, 2016 and (as amended on December 30, 2016 by Chapter 351 of the Acts of 2016 and, thereafter, on July 28, 2017 by Chapter 55 of the Acts of 2017) requires a Cannabis Control Commission to issue regulations regarding the licensing of commercial activities by March 15, 2018 and to begin accepting applications for licenses no later than April 1, 2018. Regulations to be promulgated by the Cannabis Control Commission may provide guidance on certain aspects of local regulation of a non-medical marijuana establishments (hereinafter, a "recreational marijuana establishment," as defined in MGL c.94G, § 1) (hereinafter, a "recreational marijuana establishment"). The regulation of recreational marijuana raises novel legal, planning, and public safety issues, and the Town needs time to study and consider the regulation of recreational marijuana establishments and address such issues, as well as to address the potential impact of the state regulations on local zoning and to undertake a planning process to consider amending the Zoning Bylaw regarding regulation of recreational marijuana establishments. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for recreational marijuana establishments so as to allow sufficient time to address the effects of such structures and uses in the Town and to enact bylaws in a consistent manner.

B. Definition.

RECREATIONAL MARIJUANA ESTABLISHMENT — A marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer or any other type of licensed

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marijuana-related business.

C. Temporary moratorium. For the reasons set forth above and notwithstanding any other provision of the Zoning Bylaw to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for a recreational marijuana establishment and other uses related to recreational marijuana. The moratorium shall be in effect through December 31, 2018. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of recreational marijuana in the Town, and to consider the Cannabis Control Commission regulations regarding recreational marijuana establishments, and shall consider adopting new Zoning Bylaws in response to these new issues.

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COASTAL RESILIENCE ADVISORY COMMITTEE

Presentation to the Coastal Resilience Advisory Committee:

Update on CRP recommendations

Tuesday, September 10, 2024

Leah Hill, Coastal Resilience Coordinator
Town of Nantucket Natural Resources Department
Lhill@nantucket-ma.gov
508-228-7200 ext. 7603

Up to date as of 9-10-24

In development

Underway

Complete/ Ongoing

ISLAND-WIDE (section 06)

Strategy ID	Strategy or Project Title	Near-Term Strategy Project Description	Type	Estimated Cost	Estimated Benefits	Target Implementation Date
✓ 1-1	Community Outreach on Property Owner Resilience Best Practices	Comprehensive outreach program to at risk home and business owners to raise risk awareness and provide guidance on best practices for reducing coastal risks for private properties.	Non-structural	Staff and Volunteer Time	N/A	2023, Ongoing
1-2	Updates to Zoning By-Law	Updates to the zoning by-law to encourage resilient design and limit investment in areas of high coastal risk.	Non-structural	Staff and Volunteer Time	N/A	2025
✓ 1-3	Updates to Wetland Ordinance and Regulations	Updates to the Nantucket wetlands by-law and regulations to encourage resilient and low impact design in resource adjacent areas while limiting impacts on resource areas.	Non-structural	Staff and Volunteer Time	N/A	2025
1-4	Strategic Retreat and Relocation Program	Develop and administer island-wide approach for pursuing strategic retreat and relocation in areas of priority coastal risks with an ongoing focus on risk communication and property owner outreach and education.	Non-structural	Staff and Volunteer Time	N/A	2024, Ongoing
✓ 1-5	Coastal Resilience & Sustainability Interdepartmental Working Group	Governance approach to encourage inter-departmental collaboration and coordination on issues related to coastal resilience and sustainability.	Non-structural	Staff and Volunteer Time	N/A	2022, Ongoing
✓ 1-6	Joint Staff Review of Development Proposals	Governance approach to maximize opportunities for coordinated decision-making and consistent customer communication by Town staff, particularly for projects located in or impacting coastal areas.	Non-structural	Staff and Volunteer Time	N/A	2022, Ongoing
✓ 1-7	Coastal Resilience and Sustainability Program	Governance approach to establish a formal program with necessary resources for managing coastal resilience and sustainability projects and programs across the island.	Non-structural	Staff and Volunteer Time	N/A	2023, Ongoing
✓ 1-8	Shoreline Change Monitoring Program	Employ mobile technology and other tools to engage community members in the process of monitoring shoreline change at pilot projects and across the island.	Non-structural	Staff and Volunteer Time	N/A	2024, Ongoing
1-9	Sediment Sourcing and Transport Study	Island-wide data collection and planning approach to identify sediment sources and define sediment movement across the island at various spatial and temporal scales in order to inform the design and planning of future sediment management projects.	Non-structural	High: $1M Low: $800K O&M: NA	N/A	2024
1-10	Stormwater Management Plan	Planning step to evaluate stormwater management issues across the island and identify recommendations for reducing stormwater flooding and improving water quality.	Non-structural	High: $650K Low: $400K O&M: NA	N/A	2025
1-11	Sediment Budget	Planning step to develop an operational sand budget for recommended shoreline projects.	Non-structural	High: $250K Low: $100K O&M: NA	N/A	2024
1-12	Stormwater By-Laws Assessment	Planning step to conduct an assessment of existing by-laws for opportunities to encourage stormwater management best management practices (BMPs).	Non-structural	High: $50K Low: $20K O&M: NA	N/A	2025
1-13	Stormwater By-Law and Regulations Update	Updates to stormwater management by-law and regulations to encourage best management practices (BMPs) that address water quality and quantity issues.	Non-structural	Staff and Volunteer Time	N/A	2025
✓ 1-14	Update locally-adopted sea level rise scenarios and Best Available Flood Hazard Data	Adopt sea level rise scenarios provide by the Commonwealth of Massachusetts and Massachusetts Coastal Flood Risk Model as the best available local flood hazard data.	Non-structural	Staff and Volunteer Time	N/A	2022

Project Priority

01 02 03

Up to date as of 9-10-24

In development

Underway

Complete

DOWNTOWN (section 07)

Strategy ID	Strategy or Project Title	Near-Term Strategy Project Description	Type	Estimated Cost	Estimated Benefits	Target Implementation Date
2-1	Steamboat Wharf Resilience	Work with the Steamship Authority to develop adaptation plan for Steamboat Wharf with the preferred option of elevating the pier above future mean monthly high water. Building scale measures can be implemented on the wharf over time to reduce risk from coastal storms. The strategy should be integrated with the design of the Downtown Coastal Flood Barrier System (Strategy 2-2) to maintain access from Broad Street onto the Wharf. Final approach will need to be planned and design by the Steamship Authority but close coordination with Town resilience planning will be critical to a successful resilience strategy.	Structural	High: $120M Low: $110M O&M: $1.3M	$19,000,000	2030
2-2	Downtown Neighborhood Flood Barrier - Later Project Phases	The barrier system, which includes the first phase project described as Strategy 2-6, includes a number of elements to be implemented over time to provide comprehensive effective flood risk reduction against future mean monthly high water. The elements include raised roadways, raised bulkheads, reinforced dunes, and flood walls. The overall approach recommends passive measures that are integrated with the existing built environment, while maintaining access to key waterside facilities such the Children's Beach Boat Ramp, Steamboat Wharf, Straight Wharf, and the Town Pier. Implementation of the approach can be phased over a period of 10 to 15 years, focusing on the lowest lying areas first, such as Easy Street (Strategy 2-6). As the project is implemented, stormwater management needs will need to be studied and addressed via new drainage infrastructure.	Structural	High: $170M Low: $150M O&M: $1.9M Note that these cost estimates include costs for the Phase 1 project (Project 2-6)	$320,000,000	2050
2-3	Easton Street and Hulbert Avenue Road Raising	Road raising project to prolong service life of Easton Street and Hulbert Avenue for emergency and everyday access in Brant Point	Structural	High: $140M Low: $130M O&M: $1.6M	Not quantified; qualitative benefits include prolonging emergency and everyday access for Brant Point	2050
2-4	Washington Street Extension and Consue Springs Walkway Raising	Road raising to prolong service life of Washington Street Extension and public access in Consue Springs	Structural	High: $65M Low: $58M O&M: $720K	Not quantified; qualitative benefits include prolonging public access to Consue Springs natural area	2050
2-5	Building Scale Resilience at 37 Washington Street	Pilot project to showcase building-scale resilience best practices on a Town-owned facility, including potentially elevation of critical systems, protection of sensitive equipment and documents, and deployable flood risk reduction measures. The first step in this recommendation is a site-specific study to determine the appropriate risk mitigation approaches for this structure.	Structuvral	High: $150K Low: $50K O&M: NA	Not quantified; benefits are dependent on risk mitigation strategy developed through recommended site-specific study.	2024
2-6	Downtown Neighborhood Flood Barrier - Phase 1 Project	Phase 1 project to advance through feasibility and design a near-term project focused on the most vulnerable location along the planned extent of the Downtown Neighborhood Flood Barrier. The Phase 1 project should focus on the coastal segment located along Easy Street from Straight Wharf to Steamboat Wharf and may include raised bulkheads, sidewalks,	Structural	High: $13M Low: $12M O&M: $150K Note that these cost estimates	$120,000,000	2025

Project Priority

Up to date as of 9-10-24

In development

Underway

Complete

MADAKET (section 07)

Project Priority

01 02 03

Strategy ID	Strategy or Project Title	Near-Term Strategy Project Description	Type	Estimated Cost	Estimated Benefits	Target Implementation Date
3-1	Madaket Road Raising and Bridge Conversion	Road raising project with conversion of existing culverts with bridges, with goal of prolonging service life of Madaket Road to provide access to and from Madaket, while advancing ecological restoration objectives for Long Pond.	Structural	High: $40M Low: $36M O&M: $440K	$6,200,000 – $17,600,000	2030
3-2	Ames Avenue Bridge Resilience	Maintain bridge for access to Smith's Point while protecting it from coastal erosion and flooding through dune restoration (see project 3-4). Continue maintenance and monitoring of existing Ames Avenue Bridge, with future elevation or relocation if necessary based on service population.	Nature-Based	See strategy 3-4	See strategy 3-4	2025
3-3	F Street Boat Ramp	Prolong service life of public boat ramp by elevating the top of the boat ramp, surrounding infrastructure, and access from F Street. Consolidate Madaket boat ramps in this location once loss of service is experienced at Jackson Point boat ramp.	Structural	High: $5.1M Low: $4.5M O&M: $57K	Not quantified; qualitative benefits include prolonging public boating access to Hither Creek and Madaket Harbor	2050
3-4	Madaket Erosion Management Pilot and Ames Avenue Bridge Protection	Dune restoration along shoreline from Madaket Road / Ames Avenue intersection to Esther's Island. Project involves natural dune construction techniques of sand and vegetation with fencing as needed. Project includes need for ongoing nourishment and maintenance of the dune at an interval determined through the design process.	Nature-Based	High: $96M Low: $86M O&M: $1.1M	$51,000,000	2025
3-5	Department of Public Works Facility and Landfill Resilience	Building scale resilience and operational resilience planning to reduce risk of damage and limit disruption to core operations at the facilities. The first step in this recommendation is a site-specific study to determine the appropriate risk mitigation approaches for the facility.	Structural	High: $300K Low: $150K O&M: NA	Not quantified; benefits are dependent on risk mitigation strategy developed through recommended site-specific study.	2024

Up to date as of 9-10-24

In development

Underway

Complete

NANTUCKET HARBOR & COATUE (section 07)

Project Priority: 01 02 03

Strategy ID	Strategy or Project Title	Near-Term Strategy Project Description	Type	Estimated Cost	Estimated Benefits	Target Implementation Date
4-1	Polpis Road Raising and Bridge Conversion at Folger's Marsh	Road raising project with conversion of existing culverts with bridges, with goal of prolonging service life of Polpis Road, while advancing ecological restoration objectives for Folger's Marsh.	Structural	High: $21M Low: $18M O&M: $230K	$5,800,000 – $14,250,000	2035
Underway 4-2	Polpis Road Raising, Culvert Expansion, and Wave Attenuation at Sesachacha Pond	Road raising, expansion of culverts or replacement with bridge, and installation of living breakwaters to reduce wave exposure, with goal of prolonging service life and maintaining emergency roadway access along Polpis Road, while advancing ecological restoration objectives for Sesachacha Pond.	Structural, Nature-Based	High: $45M Low: $40M O&M: $500K	$3,000,000 – $11,000,000	2035
Underway 4-3	Coatue Erosion Management and Dune Resilience	Dune restoration and wetland creation/enhancement to reinforce narrow low-lying sections of barrier island, between Five Fingered Point and Bass Point and between First Point and Second Point, to prevent washover and/or breaching into the harbor. Monitor performance of approach to assess need for ongoing nourishment and/or adaptation to higher design elevations.	Nature-Based	High: $41M Low: $36M O&M: $450K	Not quantified; qualitative benefits include ecological restoration and potential for reduced long-term flooding impacts in the Harbor as well as reduced impacts to fisheries, habitat, and navigation.	2025
4-4	Numerical Modeling Study of Coatue Breaching	Numerical modeling study to evaluate the likelihood and consequences of Coatue breaching for the Harbor and surrounding communities, including impacts to habitat and navigation, in order to inform decisions about future adaption measures on Coatue.	Non-structural	High: $250K Low: $100K O&M: NA	NA	2026

Up to date as of 9-10-24

In development

Underway

Complete

SCONSET (section 07)

Strategy ID	Strategy or Project Title	Near-Term Strategy Project Description	Type	Estimated Cost	Estimated Benefits	Target Implementation Date
5-1	Sconset Bluff Dune Restoration	Dune restoration and construction to mitigate bluff erosion and increase resiliency. Natural dunes with vegetation are appropriate. Project includes need for ongoing nourishment and maintenance of the dune at an interval determined through the design process.	Nature-Based	High: $16M Low: $14M O&M: $180K	Not quantified; qualitative benefits include reduced long-term risk of erosion impacts to private residences and public infrastructure in Sconset.	2030
5-2	Codfish Park Dune Restoration	Dune restoration and construction to manage and slow bluff erosion. Natural dunes with vegetation are appropriate. Project includes need for ongoing nourishment and maintenance of the dune at an interval determined through the design process.	Nature-Based	High: $21M Low: $19M O&M: $240K	$7,000,000	2030
5-3	Baxter Road Relocation Planning	Planning for and implementation of road relocation, including acquisition of easements, access and maintenance agreements, finalization of road alignment, and development of final designs for construction.	Structural	High: $30M Low: $25M O&M: $600K	N/A	2030
5-4	Sconset Bluff Nearshore Breakwaters Feasibility Study	Conduct detailed feasibility study to assess technical constraints, potential impacts, and benefits and costs of nearshore breakwaters along the Sconset Bluff.	Non-Structural	High: $800K Low: $600K O&M: NA	N/A	2025

[No Title]

Project Priority

01 02 03

Up to date as of 9-10-24

In development

Underway

Complete

NORTH SHORE (section 07)

Project Priority

01 02 03

Strategy ID	Strategy or Project Title	Near-Term Strategy Project Description	Type	Estimated Cost	Estimated Benefits	Target Implementation Date
7-1	North Shore Dune Restoration and Nourishment	Targeted dune restoration and construction to reduce risk of erosion along the North Shore, building on dune restoration strategies adopted by existing private property owners in area. Project includes need for ongoing nourishment or installation of near-shore underwater sand berm at key locations.	Nature-Based	High: $38M Low: $34M O&M: $420K	$16,000,000	2035
7-2	Sand Pumping Feasibility Study	Study the feasibility and impacts of a sand pumping and by-pass systems to connect sand sources from inlet to the North Shore.	Non-structural	High: $250K Low: $100K O&M: NA	N/A	2027

[No Title]

CRAC Homework for Updating Zoning By-law with Coastal Resiliency
9/10/24 CRAC Meeting

Gary:
Regarding the homework assignment, I gave you my suggestions at the last meeting when we discussed this topic. We have a CRP, it contains brilliant thinking by experts on what changes should be made to our Zoning laws, and the planning board hasn't even considered them, as Leslie indicated.That's my roadmap!

Matt:
Adopt CRP recommendations.
Require homeowners in at risk areas sign liability waivers whenever possible.
Focus on coastal resilience risk areas that have largest potential for increased development (buildings, pools, cellars, or other structures that impede resiliency) first before situation worsens.

Rachael:

1. After reviewing the zoning code, I think the simplest recommendation is to include coastal resiliency language in the definitions and then seek opportunities to integrate the language into the regulations.

2. Far more complicated is exploring whether the definition of the Flood Hazard Overlay District (FHOD) can be expanded in any way that enables it to include the insurances rates as well as considering metrics such as depth to groundwater, land subject to coastal storm flowage designation and any other aspects that would facilitate limiting further building in areas where the Town will be challenged by the requirement to improve and maintain access. The Middle Moors Management District (MMD) is an interesting example of a zoning district that seems to have been created to maintain an environmental resource. Is it worth considering the MMD as a framework for an environmentally driven adaptation to the FHOD.

Tim:
Will bring questions to the meeting.

Doug:

Excerpts from CRP Section 06
Regarding Zoning & Land Use Regulations

Zoning and Land Use Regulations
Nantucket's zoning by-law (Chapter 139) controls the location, size, and use of buildings and other structures by organizing the island into districts outlining specific regulations and design standards within those districts. Nantucket's current zoning maintains the island's low-density

residential character along much of its coastline. Existing zoning regulations ensure that future development is consistent with this low-density character by limiting most uses to residential (including primary, secondary, accessory, and tertiary dwellings) across much of the island, with the exception of Downtown and Mid-Island where higher density residential, commercial, and mixed-use structures are permitted. Much of the island is conserved as permanently protected open space, which can never be developed regardless of the applicable zoning district. Local wetland regulations further limit the potential for development along the coastline, as discussed in more detail later in this section. Design review processes and Historic District Commission requirements also shape the appearance and location of development across the island.

To help advance long-term coastal resilience on Nantucket, additional provisions can be considered for incorporation into the zoning by-law. The goals of these changes are to 1) shape land-use and development regulations that reduce barriers for home- and business-owners implementing resilience measures on private properties in coastal hazard areas and 2) limit the potential for future densification in areas that are at extreme coastal risk, unsafe for human occupation, or not suited for future infrastructure investment. The changes are presented separately here based on the coastal risk zones to which they apply. The coastal risk areas are defined in Section 5 as part of the Island-Wide Resilience Framework.

Current Regulations and Opportunities

The Flood Hazard Overlay District (FHOD) of the Town's zoning by-law embodies the National Flood Insurance Program (NFIP) flood damage prevention standards. The FHOD applies to all areas that correspond to FEMA's Special Flood Hazard Areas delineated on Nantucket County's Flood Insurance Rate Maps. The Special Flood Hazard Areas are identified using historic flood information and modeling, and do not consider predicted climate changes such as sea level rise and more frequent and intense storm events. The Flood Resistant Design and Construction provisions of the Massachusetts Building Code also reference FEMA's Special Flood Hazard Areas.

Until higher standards and dynamic flood risk are incorporated into the Massachusetts Building Code, Nantucket can enforce more stringent floodplain management regulations and standards through the land use and dimensional requirements in the zoning code, through conditional use requirements for development in the floodplain, and through the Planning Department and Planning Board's review processes. With the release of FEMA's Risk Rating 2.0 in late 2021, NFIP premium rates will be revised to more accurately reflect risk and buildings erected to higher standards are likely to qualify for lower rates under this structure. While the process of implementing changes to local by-laws and regulations can be politically complex, policy changes have overall lower costs and greater resilience benefits over time compared to most structural solutions. The actions in this section are listed in terms of complexity of implementation from technical, administrative, and political perspectives.

All changes are recommended approaches for advancing coastal resilience on Nantucket, but each will need to be discussed as part of a public process through the Nantucket Planning Board and Planning & Economic Development Commission prior to the development and adoption of by-law revisions.

Zoning Recommendations For Areas of Moderate Coastal Hazard
Moderate Coastal Risk Areas may be exposed to coastal hazards by 2070. In these areas, approaches to adapt or protect against flooding are appropriate. Changes in coastal risk should be monitored and decisions made accordingly. Section 5 includes more information on considerations related to Moderate Coastal Risk Areas.

Minimum Changes

- Nantucket should adopt the provisions included in the Massachusetts 2020 model floodplain by-law in order to continue participation in the National Flood Insurance Program (NFIP). This model by-law includes mandatory updates to the current Flood Hazard Overlay District (FHOD) in Nantucket's zoning by-law.
    - The Commonwealth has issued guidance and FAQs on the model floodplain by-law and State staff are available to help support local communities in the process of updating their by-law. For more information, visit mass.gov/guides/floodplain-management

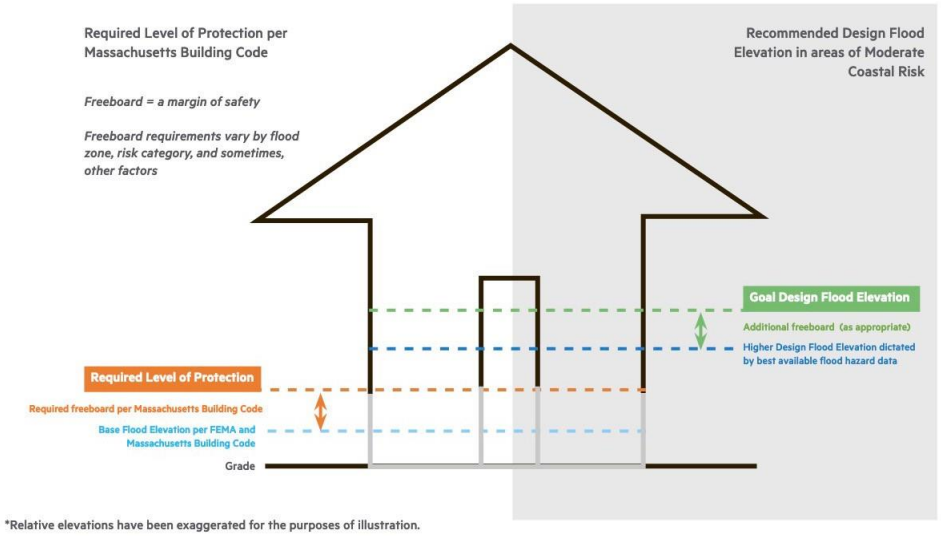
- Incorporate a requirement that project proponents subject to Town approvals must demonstrate how their building and site plan will manage a 1% annual chance flood elevation including wave action with 4.3 feet of sea level rise (expected by 2070) or 7.9 feet of sea level rise (expected by 2100) depending on the type and anticipated life of the structure. This approach has been used successfully in other communities to encourage private developers to build to higher standards when not required to under Building Code. This strategy can be paired with incentives for building to a higher standard of resilience, such as reduced permitting fees, expedited permit reviews, and relaxed height restrictions. For historic properties, special exceptions may be necessary due to limitations on the degree to which properties in local historic districts may be elevated. Designs for historic properties should comply with the guidance provided in Resilient Nantucket: Flooding Adaptation & Building Elevation Design Guidelines.
    - The Commonwealth's Resilient MA Action Team has developed a digital Climate Resilience Design Standards Tool that includes a methodology for screening proposed projects for climate risks and recommended climate resilience design standards. The Town of Nantucket may consider requiring that new development utilize this screening tool to inform climate resilient design decisions. For more information, visit resilientma.org/rmat_home/designstandards/

Additional Changes

- Excluding necessary flood protection elements, required access to elevated buildings, structures for elevated mechanicals, and other resilience measures, from gross floor area and lot coverage calculations.
- Changing the definition of building height to exclude uninhabited space used for flood risk mitigation, such as wet floodproofing.
- Disallowing or imposing Special Permit restrictions on essential/critical Facilities and high-risk structures, such as hospitals, schools, assisted living facilities, and Town administrative offices in areas subject to the 1% annual chance flood with 4.3 feet of sea level rise (expected by 2070) or 7.9 feet of sea level rise (expected by 2100) depending on the type and anticipated life of the structure.

More Complex Changes for Moderate Coastal Risk Areas

- Establish recommended Design Flood Elevations (DFE) based on a selected sea level rise increment, such as 4.3 feet (expected by 2070) or 7.9 feet of sea level rise (expected by 2100), above the minimum elevations required by Massachusetts Building Code. The DFE would represent the new minimum for lowest occupiable floor and critical systems for residential uses or flood proofing for non-residential structures. The DFE should be based on the higher elevation dictated by FEMA, Massachusetts Building Code, or MC-FRM. Additional freeboard, as described in Section 4, should be added to the selected DFE based on the criticality of the proposed structure. For historic properties, special exceptions may be necessary due to limitation on the degree to which properties in local historic districts may be elevated. Designs for historic properties should comply with the guidance provided in Resilient Nantucket: Flooding Adaptation & Building Elevation Design Guidelines.



*Relative elevations have been exaggerated for the purposes of illustration.

This diagram compares different levels of flood protection for at-risk structures. The left side of the diagram shows the level of protection currently required by Massachusetts Building Code. The right shows how additional elevation can be encouraged based on best available flood hazard data to arrive at the recommended Design Flood Elevation.

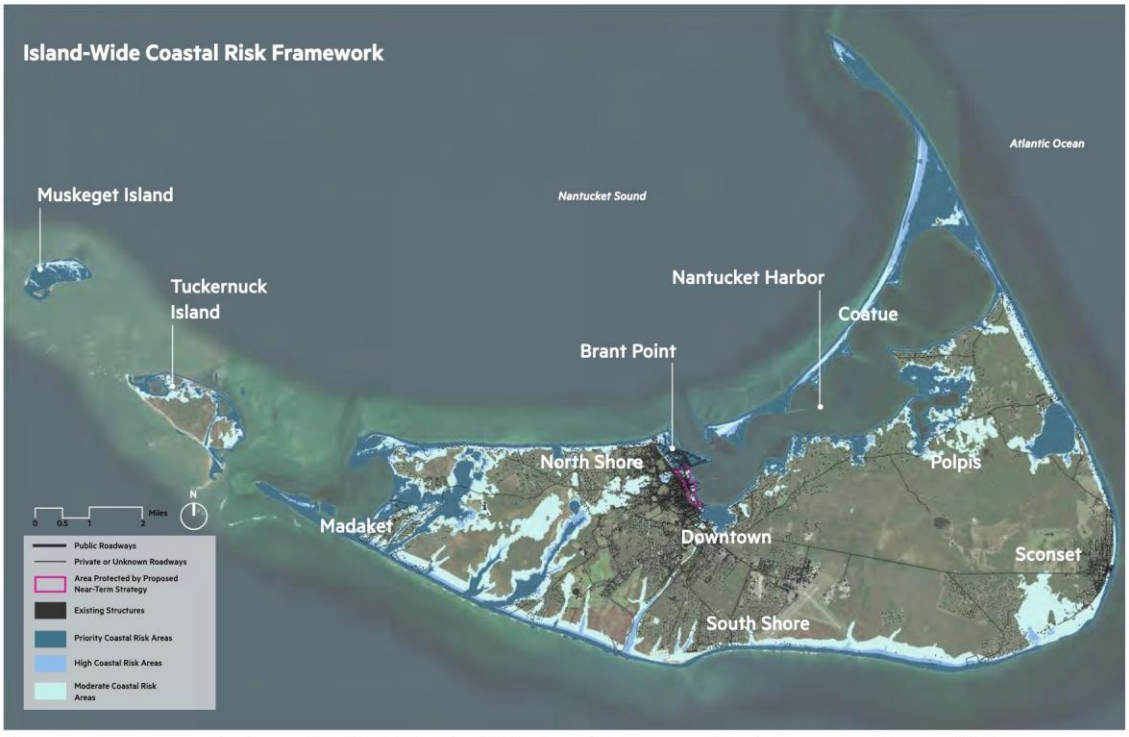
- Expand the Nantucket Flood Hazard Overlay District to an inland geography that incorporates the future floodplain including sea level rise. All changes recommended for moderate coastal risk areas would apply in this expanded district geography. The extent of the future-looking Flood Hazard Overlay District can be defined in one of two ways:
    - Adoption of local "Best Available Flood Hazard Data" that includes mapping of future floodplains and flood elevations based on sea level rise projections. These data can be provided by the MC-FRM but would need to be formally adopted by Town policy and be made publicly accessible to project proponents. Town staff may need training and other resources to administer and enforce these new requirements.
    - Another option that may be easier to administer within existing Town capacity is to reference the 0.2% annual chance (500-year) floodplain on the adopted FIRMs as a proxy for future flood risk. The 0.2% annual chance floodplain extends beyond the 1% annual chance floodplain where the Flood Hazard Overlay District currently applies and would capture an area that is likely to be subject to future coastal flooding. BFEs are not provided for the 0.2% annual chance floodplain but a target elevation above grade or datum can be established as a DFE for this area.

Zoning Recommendations For Priority Action and High Coastal Risk Areas

Priority Action and High Coastal Risk Areas face extreme coastal risks today or within the next three decades. Density should be proactively reduced and action should be taken to manage future investment in these areas to reduce the immediate and longer-term threat to people, property, and livelihoods. Section 5 includes more information on considerations related to Priority Action and High Coastal Risk Areas.

Minimum Changes

- Where development review or approval is required, establish protocol for Planning staff and Planning Board review of development proposals within Priority Action and High Coastal Risk Areas for consistency with long-term planning goals of reduced density and development. This protocol should include sharing information with the project proponent regarding coastal risks to which they may be exposed, any applicable changes to long-term capital planning in their area, and project review that requires project proponents to demonstrate that all feasible steps have been taken to minimize risk to life and property. For new developments and substantial improvement projects in these coastal risk areas, the Planning Board should receive formal sign off and input on proposed plans from PLUS, the Town Engineer, DPW, Sewer Department, building inspector, coastal resilience coordinator, historic preservation staff, conservation agent, and other critical departments.



This map shows the coastal risk areas identified in the Island-Wide Coastal Risk Framework, including Priority Action and High Coastal Risk Areas. Additional information on these areas is provided in Section 05.

More Complex Changes for Priority Action and High Coastal Risk Areas
Additional changes can be made to the Nantucket zoning by-law to manage growth and reduce future density in areas subject to extreme and high coastal hazard. The goal of these measures is reducing the number of dwellings and people residing in areas that may be unsafe for long-term occupation and where the Town will face challenges in delivering infrastructure and services due to coastal risks. Options for recommended changes are included in the bullet points below:

Recommendations
- Limiting new residential uses to single-family detached dwellings, with no permitted secondary, tertiary, or accessory dwelling units.
- Make all structures subject to Special Permit.
- Limiting lot coverage for overall development to the greatest extent practical, ideally below 20%.
- Prohibiting accessory uses that increase impervious cover including pools and other outbuildings.
- Increasing minimum lot size to encourage aggregation of lots and reduce overall residential density within an area.
- In coordination with local wetland regulations, require maximum practical setbacks from mean high water.
- Impose reporting requirements that the property is located in an area of high coastal risk and that residential retreat is likely in the future.

There are multiple ways these limits could be implemented through the zoning by-law, including through the creation of a Special Coastal Risk Overlay District, by rezoning Priority Action and High Coastal Risk Areas to a lower-density district within the zoning by-law, by adopting new special permit requirements in these areas, or by extending the existing island perimeter restrictions inland based on a defined, rolling distance from mean high water.

The Town can also explore the designation of . This tool has been used on Cape Cod and Martha's Vineyard to pause certain types of development in specified areas. Nantucket could use this tool to temporarily limit development in areas of high coastal risk and allow time for further land use planning.

Additional Resources
The Metropolitan Area Planning Council provides detailed guidance and examples for Massachusetts communities interested in advancing climate resilience through land use strategies. The resource highlights regulatory language and policy examples from MAPC's 101 communities and beyond.

Additional Considerations
Creating a new Overlay District or adopting additional provisions within the existing Flood Hazard Districts Overlay District may cause confusion for some project proponents. The Flood Hazard Districts Overlay District would remain the regulatory tool for administering NFIP requirements. If the Town pursued entrance into the Community Rating System (CRS), adopting these provisions would allow the Town to administer the NFIP floodplain management program within future flood zones and obtain CRS credits for instituting higher standards. This approach requires the justification of the sea level rise projections and future flood inundation areas as the Best Available Flood Hazard Data. It is important to note that flood insurance requirements would still be based on the FEMA Special Flood Hazard Area to prevent property owners from overpaying premiums for future flood risk. Further, all recommended changes will require additional outreach to communities potentially impacted by the changes to generate awareness, refine recommendations based on community and developer perspectives, and build support for changes that can be adopted by Nantucket Town Meeting.

Massachusetts Building Code

Current Regulations & Opportunities

The Massachusetts Building Code (780 CMR), administered by the Board of Building Regulations and Standards (BBRS) and enforced locally through Planning and Land Use Services, provides minimum standards for flood-resistant buildings within FEMA's flood zones. The 9th edition of the Building Code came into effect in 2018, which includes provisions of ASCE 24-14, Flood Resistant Design and Construction. The Building Code does not include key standards that could increase the resilience of new building such as increased freeboard requirements and does not consider future flood projections based on sea level rise. The Town is limited in its ability to impose new, more stringent requirements through the building code. The Town may join other municipalities and not-for-profit organizations in advocating at the state level for more stringent building codes that include requirements intended to mitigate risk to buildings from future flood risks.

Ideas from CRAC Discussions with Chairs of Planning Board, ZBA, HDC, ConCom and BoH, 4/23/24 & 5/14/24

- Shift liability to property owners for developing in at-risk areas ("buyer/builder beware")
  - Require property owners to release the Town of responsibility as a condition for development in areas that meet certain risk criteria. – M. Fee, Select Board
  - Town/County should further explore road discontinuances. - S. Engelbourg, ConCom
- Is there an opportunity to help reconcile the various competing/conflicting interests within Nantucket's regulatory framework?
  - 1) ConCom in increasing setbacks in wetland resource areas, 2) HDC in limiting ridge heights and second floor massing, and 3) FEMA regulations which require minimum first floor elevations in flood-prone areas? Together these three competing interests are creating an increasingly challenging regulatory environment for Nantucket. – R. Pohl, HDC
  - There are a number of current maps that to some degree are competing. If there was a way to create a more holistic zoning map that takes into consideration coastal resilience along with HDC, ConCom and Planning perspectives, that would be a helpful new tool. – B. Rector, Planning Board
  - Waivers for historic structures can create additional challenges for home insurance. – H. Backus
  - "If there was a zoning district, an overlay district, or whatever you want to call it, to help give the zoning board guidance, that takes coastal resilience concerns into account while interpreting the zoning bylaw, that would be tremendously helpful." J. Brescher, ZBA
- Introduce positive incentives into our regulatory framework, as a way to augment the restrictions and penalties
  - Pohl encouraged the Town to consider adding positive incentives (carrots) to help balance restrictions (sticks). R.Pohl, HDC
  - Fee spoke to the possibility of offering incentives for architects/builders to employ design and engineering strategies that are adaptable to the need for future height changes.
  - This is consistent with the idea of an incentive program to encourage relocation from at-risk areas.