



Nantucket Land Council

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January 21, 2021

Ashley Erisman, Chair
Nantucket Conservation Commission
2 Bathing Beach Road
Nantucket, MA 02554

Re: Proposed Zoning Bylaw Amendment – Docks and Piers

Dear Ms. Erisman and Commission,

I have submitted a citizen's warrant article for the 2021 Annual Town Meeting to amend the Nantucket Zoning Bylaw as it relates to the regulation of docks and piers in our harbors (see attached). No action is required by the Commission, however I am writing to inform you of the proposed change, receive any feedback and address any questions you may have.

The Bylaw under Chapter 139 Section 22, Island Perimeter Restrictions, currently allows for the maintenance, repair and in-kind replacement of existing docks, piers or wharves, including reconfiguration of such structures, provided that there is no net increase of the structure's existing footprint. The proposed changes, in addition to language improvements, requires that any reconfiguration of an existing dock, pier or wharf cannot be "*more detrimental to the marine environment*" than the existing structure. For example, under the current Bylaw an existing pier could be reconfigured as a narrower and longer structure that extends into sensitive marine habitat without a net increase in the structure's existing footprint. The proposed amendment would require specific consideration to the impacts a change in the configuration of a dock, pier or wharf would have on the surrounding environment. It refers the special permit granting authority, in this case the Zoning Board of Appeals, to the Harbor Master and the Natural Resources Department for their comment and recommendation.

The existing Bylaw was adopted as a recommendation of the Nantucket and Madaket Harbors Plan in order to protect the public's access to shellfishing areas, address navigation concerns as well as protect the natural resources of the marine environment. All projects impacted by these changes will still require a permit from the Conservation Commission. The proposed amendment does not impact that process, it simply adds more clarity to the Zoning Bylaw regarding those resources it was originally intended to protect.

I will be available at your next public meeting for any questions or comments.

Thank you for your time,



Emily Molden
Executive Director

Enclosure

Citizen Warrant Article

Primary Sponsor

Name: Emily Molden

Address: 139.5 Hummock Pond Road

Email: emily@nantucketlandcouncil.org

Phone #: 508-901-1901

Warrant Article Title: Proposed Amendments to Docks, Piers and Wharves Prohibition

To see if the Town will vote to (may attach body of article on separate page):

See Attached.

; or otherwise act thereon.

Proposed Amendments to Nantucket Zoning Bylaw Ch 139 S 22

§ 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 ~~or creation~~ of new appurtenant structures (defined as floats or ramps) ~~for existing docks, piers or wharves~~ is prohibited for shorefront land in all districts, ~~except those docks, wharves and piers approved by the Nantucket Conservation Commission in the former Residential Commercial Districts as of July 31, 2005, and where a private pier previously existed on the premises.~~ Nothing in this § 139-22 shall prohibit nor regulate the repair, maintenance or like-kind replacement of any ~~lawfully existing preexisting nonconforming~~ dock, pier or wharf ~~so long as such dock, pier or wharf is not extended nor any new appurtenant structures are added thereto.~~

C. In the Harbor Overlay District and for commercial water-dependent uses only, (1) new docks, piers or wharves; ~~for commercial water-dependent use and~~ (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; ~~for purposes of commercial water-dependent uses~~ are permitted uses.

D. Any proposed extension or reconfiguration of or addition ~~or creation~~ of new appurtenant structures to a preexisting ~~legally~~ nonconforming dock, pier or wharf must be reviewed and approved by the special permit granting authority in accordance with § 139-33A(41). 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 Department of Marine and Coastal Resources Harbor Master and the Natural Resources Department, or its successor agency, for comment and recommendation in accordance with the procedures of § 139-30.

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 landbased 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.



Citizen Warrant Article Questionnaire

The Finance Committee (FinCom) encourages article sponsors to provide complete and comprehensive answers to the below questions. Your materials will be distributed to members well in advance of the Public Hearing at which you will have the opportunity to speak on your proposal. The more specific and relevant information provided on the action you seek from the Town Meeting, the more prepared FinCom will be for the actual hearing with you. The questionnaire is not required but is intended to provide a full set of materials for the FinCom to evaluate. Additional sheets may be attached to this form.

Date Form Completed: November 9, 2020	Date Rec'd by Town Admin:
Article Title: Proposed Amendments to Docks, Piers and Wharves Prohibition	
Sponsor Name: Emily Molden	Email: emily@nantucketlandcouncil.org

<i>1</i>	<i>At a summary level, what is the proposed purpose and objective of this Warrant Article?</i>
Response	This warrant article is intended to clean up the language in the Island Perimeter Restrictions that prohibits new residential docks, piers or wharves, provide relevant updates, and to ensure there are no additional negative impacts to the marine environment from the reconfiguration of lawfully existing docks, piers or wharves.
<i>2</i>	<i>Does the community-at-large gain value through the article? If so, how?</i>
Response	The community-at-large gains value through this article because it reinforces the protection of the marine environment, supports eelgrass and shellfish habitat, supports harbor restoration efforts and ensures greater sustainability of the harbor ecosystem and our local fisheries.
<i>3</i>	<i>Have you done any research on the topic that can be shared? If yes, please feel free to attach any supplemental information.</i>
Response	Docks and piers can negatively impact recreational and commercial shellfishing, navigation, water quality and the natural resources of the marine environment including eelgrass habitat. There is extensive literature on the impacts of these structures to the marine environment and I can provide sources for this supplemental information.

4	<i>What is your understanding of the cost implications (operating and capital), both immediate and long-term to the town? (example: personnel costs, maintenance, equipment, supplies, etc); and, what would be the proposed funding source?</i>
Response	This article will have no cost implications to the Town.
5	<i>Who do you envision executing the outcome of the article (will it require a new position; how would it fit in with a particular department; who would enforce it; who would be in charge of implementing it)? Have efforts have been made to involve the necessary participants as to the impacts of executing the article?</i>
Response	The amendments to the bylaw in this article will not change its implementation by the special permit granting authority. I have shared the proposed amendments with multiple Town departments including PLUS, the Harbor Master and Natural Resources Departments, as well as members of Con Com, ZBA and the Planning Board.
6	<i>Is the topic of the article contained within any Town Plan (ie, Master Plan, Transportation Plan, Capital Improvement Plan, Strategic Plan)?</i>
Response	These bylaw provisions were originally part of the Nantucket and Madaket Harbors Action Plan adopted by the Town in 2006 and by the state in 2009. This bylaw prohibition was adopted to protect and enhance the ability of the public to access shellfishing areas along the shoreline, to navigate along the shoreline, to protect water-quality and natural resources, and to preserve the traditional community character. Relevant Harbor Plan sections are attached for reference.

September 2019

Excerpts from: Nantucket and Madaket Harbors Action Plan

<https://www.nantucket-ma.gov/DocumentCenter/View/10269/Nantucket-and-Madaket-Harbors-Action-Plan-PDF>

2.3.4 DOCKS AND PIERS

Nationwide, docks, wharves, and piers have been demonstrated to have a wide range of impacts; they may shade eelgrass and marsh grasses, impede longshore currents and sediment movement, obstruct navigation and mooring, block public access along the shore, or change the visual character of the shoreline. On the other hand, they are necessary for transportation of people, goods, and materials to an island and provide public access from the shore to the water. Nantucket is served by the Steamship Authority dock. However, the development of a commercial dock at an alternative location has been discussed. This could help alleviate truck traffic in the downtown area and could reduce the problems associated with the location of the existing dock and the need to access the main channel. An additional on-going discussion has been the relocation of the fuel off-loading facility and the tank farm away from the downtown area. The option to develop a fuel off-loading facility away from the downtown area may be challenging. The general feeling is that its physical and economic feasibility should be explored along with other alternatives to evaluate what measures reasonably can and should be taken to create a better situation than the existing one.

Historically, the voters of Nantucket have differentiated between public or commercial docks and private structures associated with residences. Presently the construction of new private docks, wharves or piers is prohibited through the town Zoning Bylaw on all of Nantucket, with the exception of the Residential Commercial District. In the latter district, a moratorium prohibiting new or expanded private docks was established through a Town Meeting vote. The moratorium was extended in April 2007 and is now scheduled to expire at the end of April 2008. In passing the zoning ordinance prohibiting these structures outside of the Residential Commercial District, the town indicated that it felt private use of the waters along the shore was detrimental to the wishes of its citizens.

3.3 SUMMARY OF ISSUES IDENTIFIED FOR THE 2007 HARBORS PLAN

The issues and recommendations that have resulted from the 2006-2007 planning process are discussed in this section. A list of responsible agencies/groups is suggested for each recommendation with the “lead” agency or group being denoted by an asterisk (*). A tabular summary can also be found in Appendix 1.

3.3.1 Key Issues

- Dock and pier moratorium in the Residential-Commercial (RC) zone –
 - ⌚ Address the moratorium that was to expire at the end of April 2007 (this has now been extended to the end of April 2008)
 - ⌚ Minimize visual impacts
 - ⌚ Minimize environmental impacts (including impacts to shellfish, water quality, and eelgrass)
 - ⌚ Minimize impacts to boating access (maintain access but prevent congestion)

3.9 DOCKS, WHARVES, AND PIERS

Goal: *To preserve and enhance the natural resources, ability to navigate, public access along the shoreline and traditional character of Nantucket and Madaket Harbors by limiting the construction of new, or the expansion of existing private docks, wharves, or piers.*

Background

Presently, the construction of new private docks, wharves or piers is prohibited through zoning on all of Nantucket, with the exception of the Residential Commercial District. In the latter district, a moratorium on new docks and piers has been in place since 2005 and by vote of the 2007 Annual Town Meeting was extended through April 30, 2008. In extending the ban, Town Meeting approved a provision to allow for the construction of a public dock or pier on both Tuckernuck and Muskeget islands because of the need for access.

Docks, wharves, and piers can have a number of impacts to the environment and natural resources, to the ability to navigate along the shore, to public access along the shoreline or to shellfishing areas, and to the traditional community character of an area. In passing the zoning ordinance prohibiting these structures outside of the Residential Commercial District, the town indicated that it felt private use of the waters along the shore was detrimental to the wishes of its citizens.

Exceptions to the prohibition of new docks, wharves, and piers were made for governmental and public entities.

Objective: *To limit the construction of new private docks, wharves and piers, and the extension or expansion of existing private docks, wharves, and piers.*

Recommendations

1. *Develop language to be considered at the 2007 Special Town Meeting to amend the town Zoning Bylaw to prohibit new, expanded, or extended private docks, wharves, or piers in any town waters. Include provisions to exempt governmental agencies or public entities from this prohibition.*

This recommended amendment to the Zoning Bylaw should be submitted to the Special Town Meeting in the Fall of 2007.

List of responsible agencies/groups:

- *Planning Board **

2. *Complete a survey of the existing docks, wharves and piers to ensure that the structures are all licensed under the provisions of MGL Chapter 91 and that the structures meet all requirements noted in their license.*

A partial listing of the existing licenses for docks, wharves, and piers on Nantucket Island will be provided as part of this updated harbors action plan (see Appendix 3). It is suggested that the Town of Nantucket could coordinate a group of volunteers to complete the list and survey the existing docks to compare their existing configuration with that licensed through Chapter 91. Any violations of the provisions of licenses for the structures should be reported to the Waterways Division of the Massachusetts Department of Environmental Protection for enforcement.

List of responsible agencies/groups:

- *Department of Marine and Coastal Resources **
- *Planning Department*
- *Conservation Commission*

3. *Review the legal status of permit applications for private docks that have already been submitted.*

Some applications for private docks in the current Residential Commercial District have been submitted in the past to one or another of the various permitting agencies, e.g. the Nantucket Conservation Commission, the Massachusetts Department of Environmental Protection, and/or the U.S. Army Corps of Engineers. These permit applications should be reviewed to clarify their legal status as part of this above recommendation for prohibition of new private docks, wharves, and piers.

List of responsible agencies/groups:

- *Conservation Commission **
- *Department of Marine and Coastal Resources*
- *Office of the Town Counsel*

4. *Implement standards for design and construction of docks, wharves, and piers, that will protect the safety of people, buildings and infrastructure, in addition to natural resources both in normal use and in the case of a significant storm.*

The Planning Board should propose design standards and criteria to be incorporated into the Zoning Bylaw that will ensure that docks, wharves, and piers will be safe for those using them and that the docks will not become a danger to the public or to natural resources in instances of significant storms.

List of responsible agencies/groups:

- *Planning Department **
- *Building Department*

5. *Establish criteria to evaluate whether a dock, wharf, or pier has substantially deteriorated and a process to have deteriorated docks, wharves, or piers repaired or removed.*

The Department of Marine and Coastal Resources, in conjunction with the Building Inspector, should develop criteria to evaluate whether such a structure should be considered deteriorated. Following such a determination, the Department of Marine and Coastal Resources should notify the dock's owner of the deterioration and set a period of time in which the dock must be repaired to satisfactory condition or be removed. The Department of Marine and Coastal Resources may determine that only a portion of the structure is substantially deteriorated and must be repaired or removed, allowing the rest of the pier to remain. The Massachusetts Department of Environmental Protection may be able to assist in this effort through the provisions of MGL Chapter 91.

List of responsible agencies/groups:

- *Department of Marine and Coastal Resources **
- *Building Inspector*