

DRAFT – Proposed Edits in *Blue Italics*
TOWN OF NANTUCKET BOARD OF HEALTH
REGULATIONS AFFECTING MADAKET

LOCAL REGULATION 51.00

In order to preserve, protect, and manage the quality and supply of fresh water, and to protect the health and welfare of the inhabitants of the town of Nantucket, the following regulations are hereby adopted by the Board of Health of the Town of Nantucket, pursuant to authority granted by General Laws, Chapter 111, Section 31 on September 19, 1973, to be effective upon publication.

51.01 SUBJECT AREA

- A. These Regulations shall be applicable in that part of the Town of Nantucket known as Madaket, more particularly described to be within the area bounded by the center line of Hither Creek; the center line of Cambridge Street; Madaket Harbor; Broad Creek; and the Atlantic Ocean.

51.02 DISTANCES

- A. In any part of said area where the percolation rate is two minutes or less per inch, the distance between the soil absorption system, and any potable water supply well, shall be one hundred and fifty feet, notwithstanding the fact that such a system or well is located on an adjacent lot of land.
- B. The distance of a soil absorption system from a property line shall be fifty (50) feet. Where the property abuts a road way or other land restricted from building, the width of the road way or restricted land can be included as part of the 50-foot set-back requirement. No soil absorption system may be located closer than 10 feet to any property line.
- C. Every soil absorption system shall have a one hundred percent (100%) reserve area which shall be no closer than fifteen (15) feet to such a soil absorption system.

51.03 SYSTEM LOCATION ON LOT.

- A. Every on site system and potable water supply well shall be on the same lot of land as the building, dwelling, facility, or structure which they serve.

51.04 CERTIFICATE OF COMPLIANCE & WATER TEST.

- A. No well shall be connected to the water distribution system of any dwelling or other building without a Certificate of Compliance issued by the Board of Health that said potable well and water distribution system does not endanger the health of any potential user. Prior to the issuance of such a Certificate of Compliance, the applicant therefore shall provide the Board of Health with proof of a satisfactory bacteriological and chemical analysis of the water from such a well.
- B. *No Certificate of Compliance for On-site Subsurface Sewage Disposal Systems with one or more Nitrogen Reducing Technology component shall be issued without proof of the following filed with the Nantucket Health Department:*
 - a.) *Active Operation & Maintenance (O&M) Agreement detailing the following:*
 - 1. *service and monitoring of proper system operation*
 - 2. *Laboratory testing of effluent at least two times per year*
 - b.) *Deed notification of the presence of an Innovative/Alternative system*
 - c.) *Title 5 compliant System As-Built plan stamped by a design engineer or land surveyor*

51.05 Nitrogen Loading limitations and Required Inspections within the Madaket Watershed Protection District

- A. *All conventional On-site Subsurface Sewage Disposal Systems located within the Madaket Watershed Protection District Zones A & B shall be inspected every five years from the date of these amended regulations. Inspection Reports shall be filed with the Nantucket Health Department.*

- B. *All properties within the Madaket Watershed Protection District not currently connected to municipal sanitary sewer lines shall have installed, upon new construction, System expansion, repairs, upgrades, and/or transfers of property, a Massachusetts Department of Environmental protection approved Nitrogen Reducing Technology waste water disposal system.*
- C. *All properties located within the Madaket Watershed Protection District Zones A & B not connected to municipal sanitary sewer lines by Saturday, December 31st, 2022 shall have installed a Massachusetts Department of Environmental Protection approved Nitrogen Reducing Technology waste water disposal system.*

51.06 Madaket Watershed Protection District hydraulic & technical On-site Subsurface Sewage Disposal System failure replacement requirements.

- A. *Properties with On-site Subsurface Sewage Disposal Systems exhibiting hydraulic failure, by inspection, within the Madaket Watershed Protection District Zones A & B shall have their systems repaired with a Massachusetts Department of Environmental protection approved nutrient reducing technology component(s) within six (6) months of the date of inspection.*
- B. *Properties within the Madaket Watershed Protection District Zones A & B with On-site Subsurface Sewage Disposal Systems exhibiting, by inspection, groundwater separation distances less than 6 feet shall have their system repaired with a Massachusetts Department of Environmental Protection approved nutrient reducing technology component(s) within twelve (12) months of the date of these amended regulations.*
- C. *Properties located within the Madaket Watershed Protection District Zones A & B demonstrating a separation distance from the bottom of the leach facility to ground water in excess of 15 feet may seek a waiver from the Board of Health from these Regulations*

51.07 SPECIAL VARIANCE

- A. *The Board of Health, in its sole discretion, may issue a variance from the strict application of these regulations, to any particular case, in accordance with its procedures and its regulations set forth below.*

- B. *Prior to granting a variance from its regulations, the Board of Health shall conduct a hearing to consider granting a variance from the strict application of its regulations. The Board of Health may grant a variance, with or without conditions, upon its finding that:*
 - 1. *The person requesting the variance has established that enforcement of the provisions of these Regulations, from which a variance is sought, would be manifestly unjust, considering all the relevant facts and circumstances of the individual case; and*
 - 2. *The person requesting a variance has established that a level of environmental protection that is at least equivalent to that provided under these Regulations can be achieved without strict application of the provision of these Regulations, from which a variance is sought.*

- C. *Pursuant to its regulations and other applicable law, The Board of Health may enact rules and regulations pertaining to its hearings and its review hereunder. Said rules and regulations shall be known as the “Nantucket Board of Health Special Variance Regulations”, and shall be on file with the Town Clerk of the Town of Nantucket.*

51.08 ENFORCEMENT

- A. *Without limiting any other available remedies or penalties, the Board of Health and/or its agent may punish any person or entity that violates these regulations by assessing a penalty of \$300.00. As an alternative to criminal prosecution or civil action, the non-criminal disposition procedure set forth in M.G.L. ch. 40, Section 21D, and Sections 1-2,1-3,1-4,1-5, and 1-6 of the Code of the Town of Nantucket may be used with 5 and 1-6 of the Code of the Town of Nantucket may be used with a penalty of \$300.00 for each violation. Each day or part thereof during which such violation occurs or continues shall constitute a separate offense.*

51.09 Severability

- A. *In the event that any provision of these regulations is declared invalid or unenforceable for any reason, all other provisions will be unaffected and shall remain in full force and effect.*

Adopted: _____, 2017

Malcolm W. MacNab, MD, Ph.D, Chair

Stephen J. Visco, Vice-Chair

J.W. Rick Atherton, Member

Helene M. Weld, Member

James Cooper, Member