



The Nantucket Land Council

Nantucket's Environmental Advocate

We Pay Attention • We Raise Awareness • We Take Action

BY VOTING "YES" ON ARTICLE 62, YOU CAN HELP PROTECT AND PRESERVE NANTUCKET!

Article 62 removes an unnecessary loophole in our local bylaw that is being exploited for inappropriate, damaging development with insufficient oversight.

****Please note: the Planning Board's comment in the warrant *"The article as proposed is in direct conflict with the Subdivision Control Law"* is misleading and not legally correct.**

In fact, Article 62 creates no conflict with state law**

WHAT problem will Article 62 correct?

There is a loophole in Nantucket's zoning by-law, which has been exploited, often for spec development, resulting in the development of dozens of new lots creating problems for Nantucket's environment and neighborhoods.

The problems associated with this loophole include:

1. The number of potential lots to be developed as a result of this loophole is unknown and **has never been accounted for in long range planning** (buildout calculations or infrastructure needs).
2. Subdivision and development of these lots is taking place **without proper abutter notification or oversight** by the Planning Board and Zoning Board of Appeals.
3. This creates infill development that **increases impervious surfaces impacting water quality** (exacerbates flooding and stormwater runoff).
4. This results in the **elimination of the yards and open spaces** that neighborhoods are zoned to include.
5. This loophole **threatens and places incredible pressure on historic structures** (incentivizes demolition).
6. This loophole is significantly increasing dwelling density raising **serious concerns around access, fire and safety**.
7. This loophole **works directly against the intention of our long range plan and zoning bylaw** to eliminate non-conformity of lots and create more conformity.
8. This loophole can **directly undermine the affordable covenant lot program** which is the only affordable housing program currently addressing home ownership.

WHO submitted Article 62?

Article 62 was submitted by **Emily Molden, Nantucket Land Council Executive Director.**

Emily submitted this article as a private citizen.

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WHAT does Article 62 do?

Article 62 removes technical language from our zoning bylaw (Section 139 33-(A)(3)) that creates a damaging loophole for inappropriate new development. This loophole exempts certain development projects from local zoning requirements, with no benefit to the community.

WHAT is currently allowed under state law?

A provision of Massachusetts General Law (chapter 41 section 81L) allows properties with two or more structures that predate local subdivision control (1955 on Nantucket) to be subdivided such that each lot contains at least one of the preexisting structures. This provision was incorporated into state law for specific circumstances, however, **this provision was never intended to convey buildability to these newly created lots if they do not conform with local zoning.** Our local zoning bylaw is intended to be independent of the state subdivision control law. State law does not provide vested rights for undeveloped lots less than 5,000 square feet.

WHEN did this become a problem?

In 2012 language was added to our Nantucket Zoning Bylaw through a “Technical Amendment” at town meeting which automatically grants these newly created lots (even if they do not conform with zoning) with preexisting, non-conforming rights. **This essentially grants them both buildability and ground cover which our zoning bylaw would otherwise not allow.**

Between 2017 and 2021, there were between two and four of these “41-81L subdivisions” annually. **In 2022, there was an alarming increase, with eight of these 41-81L subdivisions. Many of the lots created are undersized at less than 5,000 square feet and some are even less than 1,000 square feet.**

WHERE is this happening?

These non-conforming projects have predominantly taken place in our residential old historic district (ROH), but have also occurred out of town including in Monomoy and Polpis. **They can occur in any area of the island.**

HOW can you help?

By striking the language in our zoning bylaw which automatically grants buildability to these newly created non-conforming lots, **we can eliminate this loophole. New lots can still be created using the preexisting structures provision in the state subdivision control law (MGL chapter 41 section 81L), but the redevelopment of those lots will require the oversight and a variance from the Zoning Board of Appeals.**

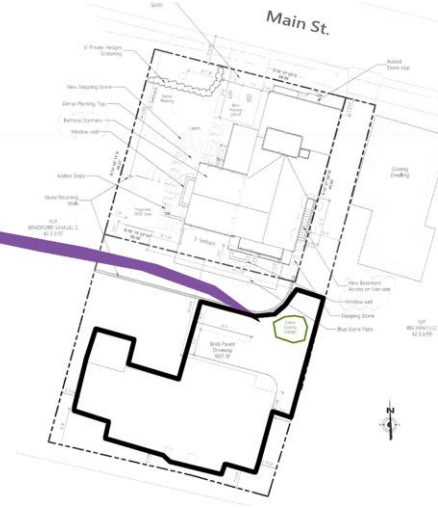
Vote YES on Article 62 and support the preservation of Nantucket’s natural environment and historic character!

State Law is not the problem, the loophole in the Nantucket Zoning Bylaw is the problem.

****Please note: Article 63 is not the preferred alternative and will not be called by the proponent****

EXAMPLES OF HARMFUL “41-81L” DEVELOPMENTS

AT 126 AND 126R MAIN STREET THIS LOOPHOLE:



- enables the development of a new non-conforming lot
- places undue pressure on historic structures
- adds structural density (increasing fire hazards) where local zoning would not allow

AT 39 AND 41 MONOMOY ROAD THIS LOOPHOLE:



- allows for the development of a new non-conforming lot
- adds inappropriate structural density to our harbor watershed
- eliminates the open space and habitat this neighborhood is zoned to include
- incentivizes the creation of a market rate lot over an affordable covenant lot which could have been created here

AT 43 AND 43A UNION STREET THIS LOOPHOLE:



- enables the development of a new tiny 871 square foot non-conforming lot
- threatens to destroy the historic elm tree that shades Union Street
- allows increased structural density (increasing fire hazard) where local zoning would not allow

**LET'S ELIMINATE THIS LOOPHOLE THAT LEAVES OUR ENVIRONMENT AND
HISTORIC CHARACTER VULNERABLE TO NON-CONFORMING DEVELOPMENT
WITHOUT PROPER ZONING REVIEW!
VOTE YES ON 62!**