

**The Nantucket Land & Water Council Recommends that you:  
VOTE NO ON ARTICLE 42**

Article 42 seeks to amend Nantucket's Zoning Bylaw governing the Residential Development Option known as "Flex Development". Flex Development, formerly known as Cluster Subdivision, is an important planning tool utilized by most municipalities across MA and has been used on Nantucket since at least the 1980's.

This Development Option enables a developer to build out bonus lots, beyond what the zoning of the property would normally allow, contingent upon a number of criteria, including the permanent protection of a % of that property as open space (depending on the residential zoning district). Typically this involves clustering the buildable lots together in one neighborhood type setting utilizing a common access roadway.

Flex Development has been used as a tool many times around Nantucket, and some examples include Fisher's Landing, Hummock Pond of Nantucket Association off of Ahab and Heller's Way, Tetawkimmo, Nanahumacke Preserve, Miacomet Preserve/Ellen's Way, etc, and the NLWC holds Conservation Restrictions on the open space surrounding most of these developments.

There are many benefits to this type of development including public benefits of open space protection (groundwater protection, habitat protection, access and proximity to open space by homeowners of the development, etc). One of the defined purposes in the Zoning Bylaw is: To encourage the permanent preservation of open space.

As currently written the Bylaw requires under Section 139-8A(1)(b) that:

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

[a] Owned by the Town or 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.

The new section proposed in Article 42 reads:

*[e] The Planning Board may waive this requirement for development containing at least 25% Affordable Housing, as defined in § 2A (Definitions) of this chapter.*

The NLWC is extremely concerned about Article 42, and our concerns with this article can largely be explained through 2 main points:

- 1) The proposed amendment is poorly drafted, in that it is not clear what it actually does. While the stated intention by the Planning Board is to add another alternative for the protection of this open space (which shouldn't be necessary), it can easily be interpreted to suggest that the Planning Board may waive the enforceable restriction defining the protection of the open space. In 20 years, or 5 years, when all we are left with is the text of the Bylaw, the amendment is confusing.
- 2) Even if the proposed amendment were interpreted in the way that the Planning Board is intending, it would serve to undermine the permanent protection of the open spaces that this Bylaw is designed to protect.
  - a) **The amendment falls short in identifying what alternative can be used. It is left completely open ended.**
  - b) If a developer is not going to utilize the options of fee ownership by the Town, the Land Bank, or another conservation non-profit, and is not going to utilize a Conservation Restriction (which already has state statutory requirements for who can hold them), the only other option involves a deed restriction which typically expires in 30 years.
  - c) Any alternative entity must be set up with the mission and ability to inspect and enforce these properties, otherwise there is little to no guarantee that they will be properly protected into the future.
- 3) Finally, in light of those concerns, it is important to also note that the affordable housing element of this proposed amendment is simply misplaced. Housing is clearly a critical issue, but given the stated intention of this amendment, there really is no clear incentive or benefit for affordable housing with this amendment.

This proposed amendment is not clear and has the potential for serious negative implications and should be defeated.

**Watch NLWC Executive Director speak about Article 42 at the Nantucket Civic League's Meet the Articles on April 6, 2024.**

Time Stamp: 46:07 through 51:27

[https://www.youtube.com/watch?v=CcjeBS3Y\\_\\_g](https://www.youtube.com/watch?v=CcjeBS3Y__g)