

Stretch Code Adoption

TOWN OF NANTUCKET



Massachusetts Green Communities Grant Program

Criterion 5

AUGUST 6, 2019

COMMONWEALTH OF MASSACHUSETTS TOWN OF NANTUCKET 2019 ANNUAL TOWN MEETING

ARTICLE 72 (Bylaw Amendment: Stretch Energy Code)

To see if the Town will vote to amend the Code of the Town of Nantucket by adding a new Chapter 141 as a General Bylaw - Stretch Energy Code for the purpose of regulating the design and construction of buildings for the effective use of energy, pursuant to Appendix 115.AA of the Massachusetts Building Code, 780 CMR, the Stretch Energy Code, including future editions, amendments or modifications thereto, with an effective date of September 1, 2019, a copy of which is on file with the Town Clerk, as follows:

Chapter 141 Stretch Energy Code

(b) §141-1 Purpose

The purpose of 780 CMR 115.AA is to provide a more energy efficient alternative to the Base Energy Code applicable to the relevant sections of the building code for new buildings.

(c) §141-2 Definitions

International Energy Conservation Code (IECC) - The International Energy Conservation Code (IECC) is a building energy code created by the International Code Council. It is a model code adopted by many state and municipal governments in the United States for the establishment of minimum design and construction requirements for energy efficiency, and is updated on a three-year cycle. The baseline energy conservation requirements of the MA State Building Code are the IECC with Massachusetts amendments, as approved by the Board of Building Regulations and Standards.

Stretch Energy Code - Codified by the Board of Building Regulations and Standards as 780 CMR Appendix 115.AA of the Massachusetts building code, the Stretch Energy Code is an appendix to the Massachusetts building code, based on further amendments to the International Energy Conservation Code (IECC) to improve the energy efficiency of buildings built to this code.

(d) §141-3 Applicability

This code applies to residential and commercial buildings. Buildings not included in this scope shall comply with 780 CMR 115.AA, as indicated.

(e) §141-4 Authority

A municipality seeking to ensure that construction within its boundaries is designed and built above the energy efficiency requirements of 780 CMR may mandate adherence to this appendix. 780 CMR 115.AA may be adopted or rescinded by any municipality in the commonwealth in the manner prescribed by law.

(f) §141-5 Stretch Code

The Stretch Code, as codified by the Board of Building Regulations and Standards as 780 CMR Appendix 115.AA, including any future editions, amendments or modifications, is herein incorporated by reference into the Code of the Town of Nantucket under the General Bylaws, Chapter 141 of the Town Code. The Stretch Code is enforceable by the Building Inspector and effective as of January 1, 2019.

Or to take any other action relative thereto.

(g) *(Tobias Glidden, et al)*

(h) FINANCE COMMITTEE MOTION: Moved that the Town Code is hereby amended by adding a new Chapter 141 (Stretch Energy Code) for the purpose of regulating the design and construction of buildings for the effective use of energy, pursuant to Appendix 115.AA of the Massachusetts Building Code, 780 CMR, the Stretch Energy Code, including future editions, amendments or modifications thereto, with an effective date of September 1, 2019 a copy of which is on file with the Town Clerk, as follows:

§141-1. Purpose.

The purpose of 780 CMR 115.AA is to provide a more energy efficient alternative to the Base Energy Code applicable to the relevant sections of the building code for new buildings.

§141-2. Definitions.

International Energy Conservation Code (IECC) - The International Energy Conservation Code (IECC) is a building energy code created by the International Code Council. It is a model code adopted by many state and municipal governments in the United States for the

establishment of minimum design and construction requirements for energy efficiency and is updated on a three-year cycle. The baseline energy conservation requirements of the MA State Building Code are the IECC with Massachusetts amendments, as approved by the Board of Building Regulations and Standards.

Stretch Energy Code - Codified by the Board of Building Regulations and Standards as 780 CMR Appendix 115.AA of the Massachusetts building code, the Stretch Energy Code is an appendix to the Massachusetts building code, based on further amendments to the International Energy Conservation Code (IECC) to improve the energy efficiency of buildings built to this code.

§141-3. Applicability.

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§141-4. Authority.

A municipality seeking to ensure that construction within its boundaries is designed and built above the energy efficiency requirements of 780 CMR may mandate adherence to this appendix. 780 CMR 115.AA may be adopted or rescinded by any municipality in the commonwealth in the manner prescribed by law.

§141-5. Stretch Code.

The Stretch Code, as codified by the Board of Building Regulations and Standards as 780 CMR Appendix 115.AA, including any future editions, amendments or modifications, is herein incorporated by reference into the Code of the Town of Nantucket under the General Bylaws, Chapter 141 of the Town Code. The Stretch Code is enforceable by the Building Inspector and effective as of September 1, 2019.



MAURA HEALEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
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August 6, 2019

Nancy L. Holmes, Town Clerk
Town of Nantucket
16 Broad Street
Nantucket, MA 02554

RE: Nantucket Annual Town Meeting of April 1, 2019 - Case # 9357
Warrant Articles # 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 52, 56,
57, 59, 61, and 62 (Zoning)
Warrant Articles # 30, 64, 65, 66, 67, 68, 69, and 72 (General)

Dear Ms. Holmes:

Articles 30, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 52, 56, 57, 59, 61, 62, 64, 65, 66, 67, 68, 69, and 72 - We approve Articles 30, 38 through 49, 51, 52, 56, 57, 59, 61, 62, 64 through 69, and 72, and the map amendments related to Articles 38 through 46, Articles 49, 51, 52, 62, 68 through 69 from the Nantucket April 1, 2019, Annual Town Meeting. We will send the approved maps to you by regular mail. Our comments on Articles 62 and 67 are provided below.

Article 62 - Article 62 amends the Town's zoning by-laws by making several changes to create a Solar Energy Overlay District ("District") where large-scale ground mounted solar photovoltaic installations are allowed as of right subject to site plan review. One change adds a new subsection 139-12.I, that imposes certain conditions and requirements on solar installations.

General Laws Chapter 40A, Section 3, protects solar energy systems and the building of structures that facilitate the collection of solar energy and provides in pertinent part as follows:

No zoning ordinance or bylaw shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare.

There are no appellate level judicial decisions to guide the Town or this Office in determining what qualifies as an unreasonable regulation of solar uses under G.L. c. 40A, § 3. However, a Land Court decision provides some guidance. In Briggs v. Zoning Board of Appeals of Marion, 2014 WL 471951 * 5 (2014), the Land Court determined that a zoning board of appeals' decision maintaining a division between commercial solar energy and residential accessory solar energy uses was reasonable and did not violate G.L. c. 40A, 3. In addition, as a general principle,

we recognize that the Town may utilize its zoning power to impose reasonable regulations on solar uses based upon the community's unique local needs. *See Burnham v. Board of Appeals of Gloucester*, 333 Mass. 114, 116-117 (1955) ("Zoning has always been treated as a local matter and much weight must be accorded to the judgment of the local legislative body, since it is familiar with local conditions."). The reasonableness of a regulation is a fact-dependent determination that includes a consideration whether a regulation substantively diminishes or detracts from a project's usefulness or imposes an excessive cost that outweighs legitimate municipal concerns *See e.g., Duseau v. Szawlowski Realty Inc.*, 2015 WL 59500, * 8 (2015) (solar project proponent failed to demonstrate that restricting a solar energy project to the Town's Industrial Districts was an unreasonable regulation and not necessary to protect the public health and welfare).

In applying the amendments adopted under Article 62 the Town should consult closely with Town Counsel to ensure that the Town does not run afoul of the solar use protections in G.L. c. 40A, § 3.

Article 67 - Article 67 amends Chapter 135, "Fuel Storage Tanks," by adding a new Section 135-2 pertaining to aboveground fuel storage tanks. The new Section 135-2 imposes replacement and construction requirements on aboveground tanks used to store heating fuel oil. Specifically, the new Section 135-2 provides as follows (with emphasis added):

At time of property transfer all aboveground tanks (any tank used to store fuel oil for the purpose of heating) shall be required to be replaced with double-walled fuel oil storage tanks or shall be required to provide 110% containment capacity to prevent contamination from leaks that may occur. Exterior fuel oil storage tanks must be covered with substantial impermeable construction material to prevent water accumulation within containment in such a way that it satisfies the Board of Health and the Fire Department. The area beneath the exterior tank shall be a 4-inch thick continuous concrete slab. All aboveground elements of a fuel storage system shall be maintained free of leaks and visible rust.

All new construction where aboveground fuel storage tanks are installed (inside and outside) shall be required to be replaced with double-walled fuel oil storage tanks or shall be required to provide 110% containment capacity to prevent contamination from leaks that may occur. Exterior fuel oil storage tanks must be covered with substantial impermeable construction material to prevent water accumulation within containment in such a way that it satisfies the Board of Health and the Fire Department. The area beneath the exterior tank shall be a a -inch [sic] thick continuous concrete slab. All aboveground elements of a fuel storage system shall be maintained free of leaks and visible rust.

As written, the requirements in the new Section 135-2 encompass all types and sizes of above ground storage tanks used to store fuel oil used for heating. The Department of Fire Services ("DFS"), Board of Fire Prevention Regulations has promulgated regulations in the Massachusetts Comprehensive Fire Safety Code ("Fire Safety Code") governing above ground storage tanks.¹ According to DFS, the requirements of Section 135-2 are not inconsistent with the Fire Safety Code because the by-law requirements are more stringent than the Fire Safety Code's requirements. *See 527 C. M. R. § 1.02, "Purpose,"* ("[t]he purpose and the intent of 527 CMR 1.00 is to prescribe minimum requirements and controls to safeguard life, property and public

¹ *See, e.g., 527 CM.R. § 1.05 "Modifications to NFPA 1 Fire Code – 2015 Edition,"* (sections 11.5.1.10.5 (11) and 11.5.1.10.7 impose requirements for tank installations located inside and outside of a building).

welfare from the hazards of fire and explosion”² However, in order to avoid any future conflict with the Fire Safety Code, the Town may wish to amend Section 135-2 at a subsequent Town Meeting to clarify what type or size tank it applies to. In addition, the Town may wish to amend Section 135-2 to require compliance with the Fire Safety Code in instances where the Fire Safety Code imposes more stringent requirements on above ground fuel oil storage tanks.³ The Town should discuss this issue in more detail with Town Counsel.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) **general** by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) **zoning** by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,
MAURA HEALEY
ATTORNEY GENERAL



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cc: Town Counsels John W. Giorgio and Lauren F. Goldberg

² See also 527 C.M.R. § 1.05 “Modifications to NFPA 1 Fire Code – 2015 Edition,” (section 1.3.3.3 provides “[w]hen the requirements of this Code conflict with any other applicable regulation, or ordinance, the provisions which establish the higher standard for the promotion and protection of safety and welfare shall prevail”).

³ The Town should fix the typographical error indicated in bold and underline in the second paragraph of Section 135-2 to include the number of inches the concrete slab must be for above ground storage tanks in new construction.