



NANTUCKET ISLANDS LAND BANK ENCROACHMENT POLICY

Adopted: October 27, 2020

Purpose

The purpose of this policy is to keep properties which are held in the public trust by the Nantucket Islands Land Bank (“Land Bank”) free from encroachments by neighbors. The types of encroachments typically found include significant plantings and landscaping, debris, fences, structures, paving and other improvements placed by property owners to maximize and expand the appearance of their own property thereby diminishing public enjoyment of Land Bank property. The Land Bank is a governmental organization which owns over 3,500 acres and is charged with acquiring, holding, and managing different types of open spaces for the benefit of the general public. The statute creating the Land Bank (Chapter 669 of the Acts of 1983, as amended, the “Land Bank Act”) requires the Land Bank to protect these assets on behalf of the public. In order to meet this obligation, the Land Bank staff maintains an active encroachment monitoring program and regularly patrols its property boundaries to ensure they are not being encroached for private purposes.

Definitions

An encroachment is an unlawful intrusion upon the right or possession of another. In the case of public land and access to public land, the placement of any plantings, structures, personal property or other improvements is deemed to be an encroachment.

Note: No property rights can be obtained by adverse possession against the Land Bank (see MGL Chapter 260, Section 31), unless the adverse use existed for over twenty years prior to the Land Bank’s acquisition of a parcel.

Trespass exists when an encroachment is created or persists despite the encroaching party’s knowledge that the encroaching activity is not accepted or permitted by the owner of the land encroached upon. Therefore, if a party fails to remove an encroachment from Land Bank property after having been notified about the fact of the encroachment, that party is trespassing on Land Bank property.

Policy

Once an encroachment is discovered, it is the policy of the Land Bank to require the property owner to remove and/or remedy the encroachment. Prior to recommending a plan of action, staff shall determine the facts of the situation and recommend to the Executive Director a plan of action which responds to the extent of harm or risk of harm caused by the encroachment. The review will take into account factors such as:

1. When the encroachment was identified and its duration.
2. The size of the encroachment and whether or not it poses a risk to public safety.
3. Whether or not the encroachment damages or imperils wetland resources or other important conservation interests.
4. Whether or not the encroachment is of a nature to cause progressive damage to Land Bank property or impedes public access to Land Bank property.
5. When and how many times the encroaching party was notified of the encroachment.
6. Whether or not the encroaching party has refused or persistently failed to remediate the encroachment.

Review Process

Reviews may include reference to the Town GIS map, the Google World Map, and to plans and permits on file at the Land Bank, Planning and Land Use Services, Nantucket Registry of Deeds, Conservation Commission, and the Historic District Commission.

In certain cases Land Bank staff may decide that property lines need to be surveyed to determine the extent of the encroachment. If the sole reason for ordering the survey is to confirm the extent of the encroachment, the Land Bank shall recoup the cost of the survey from the property owner. If the owner provides a survey stamped by a Registered Land Surveyor showing the necessary information, it shall be accepted for review by Land Bank staff.

Procedures

A. Identification of Encroachments

Encroachments observed by Land Bank employees shall be immediately reported to the Land Bank's Executive Director. Otherwise, any member of the public may contact the Land Bank office to report any concerns or observable accounts of encroachment activity.

Examples of Encroachments on Land Bank Property:

- Removal, trimming of trees or vista pruning;
- Mowing, brush cutting or clearing of vegetation;
- Landscaping;
- Parking of vehicles or staging/placement of other personal property;
- Drain pipes, installed without permission of the Land Bank, which discharge to or from Land Bank property;
- Installation of structures

B. Remediation of Encroachments

After review of the encroachment, Land Bank staff shall recommend to the

Land Bank Executive Director a plan of action designed to notify the encroaching party and to seek removal of the encroachment and other remedies as may be appropriate under the circumstances.

Whenever an encroachment is newly discovered, the plan will begin with the Land Bank staff sending a letter to the encroaching party by a means allowing confirmation of delivery. The notice will describe the encroachment and inform the property owner or leaseholder that the encroachment must be remedied within a specified time period.

If the property owner or leaseholder does not initiate steps within the specified time period to remove the encroachment, the property owner or leaseholder shall be sent a follow-up letter from Land Bank staff by means providing confirmation of delivery. This letter will reiterate the requirement that the encroachment be remedied within a specified time period and if deemed appropriate, legal action will be indicated as a next step.

In cases where the encroacher persistently fails to remediate or cure the encroachment, or when the Land Bank Executive Director finds the existence of an immediate threat to public safety or damage to Land Bank property, the property owner or leaseholder will be sent a letter describing the encroachment (if it has not been previously described) and indicating that the encroacher will be responsible for reimbursing the Land Bank any and all expenses the Land Bank incurs curing the encroachment or pursuing legal action. After such notice, the encroachment, including unsafe conditions shall be corrected or made safe immediately by Land Bank staff or a subcontractor hired by Land Bank staff and restitution will be demanded in writing from the property owner or leaseholder.

When notices are ineffective, the Executive Director shall recommend that the Land Bank Commission refer the encroachment to police authorities as a criminal trespass or to counsel for commencement of suit seeking appropriate remedies, including injunction and orders for restitution and damages.

This policy may be revisited and amended from time to time as requested by the Commission.