

SECTION 9: NON-CONFORMING SITUATIONS

Existing Bylaw Section: Section 3.G – Non-Conforming Uses; and Section 6.G – Non-conforming Accessory Signs

Approach: This section was drafted to accomplish four primary objectives:

- 1) Address a wider range of non-conforming situations including parking, signs, lighting, landscaping and other activities that are now subject provisions of the Bylaw***
- 2) Provide more definitional clarity regarding the different types of nonconformity (uses, structures, lots and other features) and tailor the rules for each situation to more closely achieve the goals of the Bylaw without adding undue administrative burdens on property owners or the Town.***
- 3) Include provisions to regulate non-complying situations that were not lawfully created after the Bylaw was adopted.***
- 4) Use the Bylaw to encourage nonconforming situations to change toward greater compliance with the provisions of the Bylaw and discourage an expansion of nonconforming uses.***

Commentary for specific provisions is provided throughout this document along with more specific references to those sections of the existing bylaw that are directly related to these revisions

1. Objectives and Applicability

- A. Nonconforming situations. For the purposes of this Bylaw nonconforming situations are those uses, buildings, structures, lots, parking spaces, signs, landscaping and other activities that are now subject to the provisions of this Bylaw which were lawful before this Bylaw was adopted, or before amendments to this Bylaw which are applicable to the situation were adopted, and that do not now conform to the provisions of this Bylaw.

COMMENT: This definition introduces the concept that the types of nonconformity extend beyond “uses” and “structures.”

- B. Noncomplying situations. Those uses, buildings, structures, lots, parking spaces, signs, landscaping and other activities that are subject to the provisions of this Bylaw which were not lawfully created after this Bylaw was adopted, or after amendments to this Bylaw which are applicable to those situations were adopted, are in violation of this Bylaw and may be called noncomplying situations.

COMMENT: This definition makes a clear distinction between situations which are legitimately “grandfathered” under G.L. c. 40A, § 6 (i.e., lawfully nonconforming situations) and those that do not enjoy statutory protection (i.e., noncomplying situations)

- C. Objectives. The provisions of this article are intended to achieve the following purposes:
- (1) To allow nonconforming situations to continue until they are discontinued or abandoned;
 - (2) To encourage change in nonconforming situations toward greater compliance with the provisions of this Bylaw and to reduce the degree of nonconformity;
 - (3) To permit some expansion of nonconforming buildings provided there such expansion shall not be substantially more detrimental to the neighborhood than the existing building;
 - (4) Where a nonconforming situation is proposed to be changed, to encourage greater conformity with all the provisions of the Bylaw and the objectives and purposes stated in this Bylaw;
 - (5) In the event of the involuntary destruction of a nonconforming situation, to permit the reconstruction of the nonconforming situation so that the owner and tenants, if any, are not subjected to substantial economic loss while, at the same time, seeking to achieve greater conformity with the provisions of this Bylaw and to reduce any adverse impacts on the surrounding area; and
 - (6) To permit the treatment of nonconforming situations to be varied by the type of zoning district and the type of nonconformity, i.e. to have a different approach for uses, structures, parking spaces, or lots, for example.

2. General Provisions

- A. A use, building, structure, parking space, sign, landscaping or any other activity which is nonconforming, but not noncomplying, may be continued but may not be increased or expanded except as may be specifically authorized by this article. If such nonconforming situation is abandoned or terminated, as set forth below, it may not be resumed except in compliance with this Bylaw.

COMMENT: The existing bylaw only references non-conforming uses or structures under Section 3-G. The existing language is also silent on the issues of lawfully versus unlawfully created nonconformities which are included below.

- B. Lawfully created.
- (1) A use, building, structure, lot, parking space, loading bay, sign, landscaping or any other activity is considered to be lawfully created, with respect to zoning requirements, if:
 - (a) It was in existence on March 31, 1925, when the Zoning Bylaw was originally adopted; or
 - (b) Subsequent to March 31, 1925, it was permitted by right by the Zoning Bylaw and was in existence prior to the effective date of any amendment which renders it

nonconforming, and, if required at the time of its creation, a building permit or certificate of occupancy was issued.

- (2) If the records of the Building Inspection Department are incomplete, the Building Inspector may accept such evidence of lawful creation for those years as he/she may deem to be adequate in lieu of official Town records.

COMMENT: This is to aid in the reasonable administration of the Bylaw by the Building Department, and to avoid unnecessary litigation.

C. Special Permit and Variance Uses are not Nonconforming Uses.

- (1) A use, building, structure, lot, parking space, loading bay, sign, landscaping or any other activity which is not otherwise permitted by right and does not comply with this Bylaw, but is allowed by a variance or special permit, is not a nonconforming situation, is not entitled to the treatments afforded by this article and is bound to the conditions of the special permit or variance, as granted; and
- (2) In the case of a special permit or variance which is not entitled to treatment as a nonconforming situation, the Board of Appeals may grant an additional special permit or variance which has the effect of extending such special permit or variance for an additional period of time provided such special permit or variance is subject to conditions that:
 - (a) Are not more permissive than those in the most recently approved special permit or variance; and
 - (b) Bring the situation closer to compliance with the provisions of this Bylaw.

COMMENT: This provision clarifies the distinction between nonconforming situations that were created by special permit, and those that were created by right, and treats the former more strictly.

D. Once in conformity, or closer to conformity, cannot revert.

Once a use, building, structure, lot, parking space, sign, landscaping or any other activity which had been nonconforming is brought into conformity with this Bylaw, it shall not be permitted to revert to nonconformity. Once a use, building, structure, lot, parking space, sign, landscaping or any other activity which is nonconforming is brought into closer conformity with this Bylaw, i.e. the amount or degree of nonconformity is reduced, it shall not be permitted to revert to nonconformity with the provisions of this Bylaw which is greater than the closest amount or degree of conformity which it has achieved.

E. Change in lot which results in noncompliance.

No lot upon which there is a building or for which a building permit is in force shall be subdivided or otherwise changed in area or shape, except through public acquisition, so as to result in a violation, applicable to either the lot or the building, of the requirements of Section 6, and of other applicable requirements of this Bylaw. A lot already nonconforming shall not be changed in area or shape so as to increase the degree of nonconformity with the requirements of this Bylaw; a nonconforming lot may be changed in area or shape to move closer to conformity with the requirements of this Bylaw, provided that no new buildable lot shall be created as a result. If land is subdivided, conveyed or otherwise transferred in violation hereof, no building permit, special permit, certificate of occupancy or approval of a subdivision plan under the Subdivision Control Law shall be issued with reference to said transferred land until both the lot retained and the newly created lot(s) meet the requirements of this Bylaw.

F. Nonconformity resulting from public action.

If, as a result of public acquisition, a use, building, structure, lot, parking space, loading bay, sign, landscaping or any other activity no longer complies with this Bylaw, it shall be considered to be nonconforming and entitled to the treatment afforded by this article provided it was in compliance at the time of the public acquisition.

COMMENT: This provision is inserted to help the Town avoid unnecessary complications resulting from land takings. The most common example is one where the Town takes or acquires a strip of land from an undersized lot in order to widen a street or intersection. Without this provision, such acquisitions could leave the property owners exposed to zoning enforcement problems, requiring variances or leaving the Town exposed to higher damage claims.

G. Discontinuance or abandonment.

- (1) A nonconforming use or structure or other nonconforming situation is considered to be discontinued whenever it is not used for a period of twenty four (24) consecutive months.
- (2) A nonconforming use or other nonconforming situation shall be deemed to be abandoned if it is apparent that the owner does not intend to resume the use or other nonconforming situation.
- (3) Discontinuance or abandonment of a part of a nonconforming use, structure or situation shall not normally be considered to be evidence of discontinuance or abandonment of the whole unless that part which is discontinued or abandoned is the part which causes the nonconformity.
- (4) Voluntary demolition of a structure without a prior determination by the Board of Appeals that the structure may be rebuilt shall constitute evidence of abandonment.

- H. The rights of a nonconforming use, structure, building, lot, parking space, or other situation are not affected by a change in ownership, tenancy or management.

3. Nonconforming Uses

- A. A nonconforming use may be continued to the same degree and for the same purpose but may be altered, expanded or extended only with a special permit from the Zoning Board of appeals in accordance with the provisions of § 2.2, provided further that the Board finds such alteration, expansion or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming use,. A nonconforming use may be considered to be altered, expanded or extended if there is a net increase in floor area, or an increase in the number of employees, or a substantial increase in the number of automobile or truck traffic generated by the use, or an increase in the hours of operation, or a change from seasonal to full-time operation, since the use first became nonconforming.
- B. A nonconforming use is limited to the lot on which it is located and cannot be relocated to another lot.
- C. Alteration, extension or expansion of a nonconforming use shall only be allowed by special permit if the alteration, extension or expansion does not increase the total of all floor area plus open ground area of the premises devoted to the use by more than fifty (50) percent. Any increase in size will be measured against the total floor area plus the open ground area that existed at the time the use became nonconforming. This restriction shall not apply to agricultural, horticultural or floricultural uses.

4. Nonconforming Buildings

- A. *One-family or two-family dwelling.* An existing nonconforming one-family or two-family dwelling which is nonconforming with respect to a minimum yard setback may be enlarged or extended in any other direction in compliance with this Bylaw by the issuance of a building permit as provided in § 3.1. Any other change, extension, or alteration of an existing nonconforming one-family or two-family dwelling may be permitted provided the Zoning Board of Appeals grants a special permit including a determination that such enlargement or extension will not increase the nonconforming nature of the structure, or that such enlargement or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

COMMENT: The current Zoning Bylaw does not include this provision. Thus, under G.L. c. 40A, unless this provision is included, the Board of Appeals would be required to issue a special permit for any change to a one- or two-family dwelling with a nonconforming setback; even if the change was compliant with all existing

dimensional controls. By providing this exemption, you avoid sending residents to the Board of Appeals in situations where it will only waste everyone's time.

- B. An existing nonconforming building, other than a one-family or two-family dwelling, which is nonconforming only with respect to a minimum yard setback may be enlarged or extended in any other direction in compliance with this Bylaw (including compliance with Site Plan Approval requirements, where applicable) by the issuance of a building permit as provided in § 3.1, provided all other uses, structures and activities on the lot comply fully with the requirements of this Bylaw.
- C. An existing nonconforming building, other than a one-family or two-family dwelling, which is nonconforming with respect to another requirement of Section 6.B., other than a minimum yard setback, may be enlarged or extended with a special permit from the Zoning Board of Appeals in accordance with the provisions of Section 2.2 of this Bylaw, provided that the Board of Appeals finds that such enlargement or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming building.
- D. *Noncomplying building.*
 - (1) If a building, or a part of a building, does not comply with either the standards in Section 6.B., except for minimum lot area or minimum lot frontage, or those that were in effect when it was constructed, and the building was constructed in accordance with a building permit issued by the Town except for such dimensional noncompliance, it shall be considered to be a nonconforming building, and entitled to treatment as such, if the following conditions are met:
 - (a) The noncompliance has existed for at least six years during which time no enforcement action under the provisions of § 3.1 has been taken; and
 - (b) The noncompliance was not created or increased by changes in lot lines after the construction of the building.
 - (2) If a building, or a part of a building, does not comply with the standards in Section 6.B., except for minimum lot area or minimum lot frontage, or those that were in effect when it was constructed; and conditions in Subsection D(1)(a) and (b) above are met but the building was not constructed in accordance with a building permit duly issued or there is no evidence a building permit was issued, the Board of Appeals may grant a special permit for the continued use of the building under the provisions of § 2.2 provided it determines the building is compatible with its neighborhood and complies with the criteria set forth in § 2.B.

COMMENT: This section provides a more complete form of amnesty for buildings constructed in violation of the Zoning Bylaw, but against which the statute of limitations for enforcement has expired.

5. Nonconforming Lots

- A. No lot which does not comply with the provisions of this Bylaw with respect to minimum lot area, minimum lot frontage, or minimum lot width or with the requirements then in effect at the time of recording or endorsement, whichever occurs sooner, shall be subdivided or otherwise changed in area or shape, except through public action, so as to be in violation of the provisions of this Bylaw. A lot already nonconforming with respect to those provisions shall not be changed in area, or shape so as to increase the degree of noncompliance. A lot which is nonconforming with respect to those provisions may be changed to be made closer in compliance, but once brought closer into compliance, i.e. the amount or degree of nonconformity is reduced, shall not be permitted to revert to noncompliance which is greater than the closest amount or degree of compliance which it has achieved.
- B. A one-family or two-family dwelling shall not be deemed a nonconforming building solely due to the lot's deficiency in area or frontage, and may be changed extended or altered by right if otherwise in conformity with the dimensional requirements in Section 6.B. In all other cases, the change, extension, or alteration of a building on a nonconforming lot shall require a special permit under Section 2.2.

COMMENT: Again, this section provides for expansion or alteration of single- or two-family dwellings without a special permit from the Board of Appeals, provided the addition, alteration or extension meet all other dimensional requirements listed in Section 6.B.

6. Nonconforming Off-Street Parking

- A. Existing nonconforming parking spaces. Any off-street parking spaces in existence on the effective date of this Bylaw or thereafter established, which serve a building or use, may not be reduced in number, or changed in location or design contrary to the requirements of Section 8 so as to increase the degree of nonconformity with the requirements of Section 8.
 - (1) If the use of an existing structure or lot which does not have sufficient parking, including a use which has no off-street parking, is changed to a different type of use for which a different number of parking spaces is required as set forth in Section 8 and there is no increase in the net floor, the following rules shall apply:

- (a) If there is a net increase in the number of required parking spaces, that net increase shall be provided, which number shall not include any existing parking spaces; and
 - (b) If there is a net decrease in the number of required parking spaces, the number of parking spaces available for future changes of use(s) shall be the number of parking spaces available based on the use(s) of the building immediately prior to the change of use(s) resulting in said net decrease as certified to and approved by the Town Building Inspector in accordance with Section 8.
- (2) If it is proposed to increase the net floor area of a building, whether by addition to the exterior of the building or by internal reconstruction, and the building does not have sufficient off-street parking, full compliance with Section 8 for the entire building shall be a condition of the issuance of a building permit for the construction of the increase of net floor area; and
 - (3) An applicant seeking credit for existing parking spaces shall first submit an off-street parking plan, as provided in Section 8, certified by a registered land surveyor or professional engineer. If the existing paved area is not marked off into parking spaces or loading bays, such spaces or bays, complying with Section 8 shall be delineated on the plan. To qualify, an existing parking space shall be entirely on the lot.
- B. Parking requirements for a building destroyed, damaged or demolished.
- (1) If a building, for which sufficient off-street parking is not provided, is destroyed, damaged or demolished by the owner, the building may be reconstructed or replaced, if otherwise permitted by this Bylaw, without providing additional parking spaces provided the new use is the same type of use as the use before the destruction, damage or demolition, or is a type of use that requires the same or fewer parking spaces. If parking spaces were provided before the destruction, damage or demolition, at least the same number of spaces shall be provided; and
 - (2) If the new use is a different type of use, for which a greater number of parking spaces is required, or if more net floor area is to be constructed than previously existed, full compliance with Section 8 for the entire building shall be a condition of the issuance of any building permit for the reconstruction or replacement of the building.

COMMENT: This section is included in order to minimize against the loss of parking due to expansion of a use or structure. Any use or expansion requiring addition off-street parking will require review and approval from the SPGA prior to issuance of the building permit.

7. Repair and Reconstruction

- A. *Continuance; repairs.* Routine maintenance and repairs are permitted to a nonconforming structure, sign, parking space or other nonconforming situation to maintain it in sound condition and presentable appearance.
- B. *Reconstruction after involuntary destruction (by right).* Any nonconforming use, structure, building, sign, parking space or other nonconforming situation which is destroyed or damaged by explosion, collapse, fire, storm, natural disaster or other catastrophic event any of which is beyond the control of the owner, may be reconstructed provided there is no increase in the site coverage or gross floor area or the degree of nonconformity and provided that such reconstruction is commenced within two years, of such damage or destruction.

COMMENT: This section is similar to the existing provisions listed under Section 3-G (c) of the Zoning Bylaw.