

Section 9: Nonconforming Situations

1) Better Organization

- The provisions dealing with nonconforming situations are currently split between Sections 3-G (Nonconforming Uses), 4-E (Exemptions for Recorded or Endorsed Lots), and 6-G (Non-Conforming Accessory Signs). The new section 9 unifies the provisions regarding nonconforming situations in one section.

2) Amendments to better address Current Planning Issues and Legal Issues

- Clarification of Objectives: The current bylaw consists primarily of recitation of the “grandfathering” provisions of the state’s Zoning Act (G.L. c. 40A, § 6). Very little guidance is given to the Zoning Board of Appeals in carrying out its responsibilities regarding the approval of changes or alterations of nonconforming uses and structures. The new bylaw includes clear goals and objectives.
- Clarification of Rules Applicable to Different Types of Nonconformities: The state’s Zoning Act is notoriously confusing when it comes to differentiating the rules applicable to nonconforming uses, nonconforming structures, nonconforming lots and other nonconformities (like parking or signs), as well as in explaining how single- and two-family uses and structures are treated more favorably. There has been a lot of case law decided since the current bylaw was drafted. The redraft attempts to capture these rules in plain English. It also adds specific rules for signs and parking nonconformities, which state law does not address.
- Streamlining for Simple Situations: The state’s Zoning Act has been interpreted in a way that requires Zoning Board of Appeals approval for changes to nonconforming structures and uses even when no new nonconformities are created. The redraft clarifies that, when a structure is nonconforming only with regard to a setback requirement, it may be expanded in other directions in conformity with the bylaw without such approval. The redraft also clarifies that a structure that is considered nonconforming only because it is an undersized lot, or a lot with insufficient frontage, may be modified by right as long as the structure conforms to the Bylaw’s other dimensional requirements.
- Amnesty for Certain Nonconformities: The redraft treats unlawfully nonconforming structures and uses and lawfully nonconforming if the statute of limitations has expired for removing or discontinuing those nonconformities. It also treats lots that have become nonconforming as a result of public action (such as a taking for intersection improvements) as conforming.