

SECTION 5.0 NONCONFORMING USES AND STRUCTURES

5.1 APPLICABILITY.

Except as herein after provided, this Bylaw shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building permit or special permit issued before the first publication of notice of the public hearing on this Bylaw or any amendments thereto, but shall apply to any change or substantial extension of such use, to a building permit or special permit issued after the first notice or said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use in a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or a structural change to a single or two unit residential structure does not increase the nonconforming nature of said structure.

5.1.1 Commencement of Construction or Operation. Construction or operations under a building permit or special permit shall conform to any subsequent amendments to this Bylaw, unless the use or construction is commenced within a period of not more than twelve months after the issuance of the permit and in any case involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

5.2 NONCONFORMING USES.

The Zoning Board of Appeals may grant a special permit to change a nonconforming use in accordance with this Section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

5.2.1 Permissible Changes. The following types of changes to nonconforming uses may be considered by the Zoning Board of Appeals:

1. Change or substantial extension of the use;
2. Change from one nonconforming use to another, less detrimental, nonconforming use. When a special permit is granted under this subsection, no use variance shall be required with regard to use or dimensional aspects of the application.

5.3 NONCONFORMING STRUCTURES.

The Zoning Board of Appeals may grant a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this Section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

5.3.1 Permissible Changes. The following types of changes to nonconforming structures may be considered by the Zoning Board of Appeals:

1. Reconstructed, extended or structurally changed;
2. Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.

5.4 VARIANCE REQUIRED.

Except as provided in Section 5.5, below, the reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a new nonconformity, shall require the issuance of a variance; the extension of an exterior wall at or along the same nonconforming distance within a required yard shall also require the issuance of a variance from the Zoning Board of Appeals.

5.5 NONCONFORMING SINGLE AND TWO UNIT RESIDENTIAL STRUCTURES.

Nonconforming single and two unit residential structures may be extended, altered, or structurally changed upon a determination by the Inspector of Buildings that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure, and that such reconstruction, extension, alteration or change does not increase the gross floor area of the structure by more than 100%.

5.5.1 Permissible Changes. The following circumstances shall not be deemed to increase the nonconforming nature of said structure and a building permit may be issued:

1. *Insufficient Area.* Alteration to a structure located on a lot with insufficient area which complies with all current setback, yard, building coverage, and building height requirements.
2. *Insufficient Frontage.* Alteration to a structure located on a lot with insufficient frontage which complies with all current setback, yard, building coverage, and building height requirements.
3. *Encroachment.* Alteration to a structure which encroaches upon one or more required yard or setback areas, where the alteration will comply with all current setback, yard, building coverage and not result in any increase in building height in the area of encroachment.

If the Building Inspector determines that proposed alteration, extension or change exceeds the all of the criteria set forth above, the Zoning Board of Appeals may, by special permit, allow such alteration, extension or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood. In the case of voluntary demolition of a single or two unit structure, reconstruction thereafter shall be governed by Section 5.7.

5.6 ABANDONMENT OR NON-USE.

A nonconforming use or structure which has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to all of the provisions of this Bylaw; provided, however, that by special permit the Zoning Board of Appeals may reestablish a nonconforming use or structure otherwise abandoned or not used upon a finding that that the reestablished nonconforming use or structure will not result in substantial detriment to the neighborhood.

5.7 RECONSTRUCTION AFTER CATASTROPHE OR VOLUNTARY DEMOLITION.

Any nonconforming structure may be reconstructed after a catastrophe or after voluntary demolition in accordance with the following provisions.

5.7.1 Procedures.

1. Reconstruction of said premises shall commence within three years after such catastrophe or demolition.
2. A building may be reconstructed as of right if (a) it will be located on the same footprint as the original nonconforming structure and (b) it will not exceed the gross floor area of the original nonconforming structure.
3. A building may be reconstructed upon the grant of a special permit from the Zoning Board of Appeals if (a) the proposed reconstruction would cause the structure to exceed the gross floor area of the original nonconforming structure or (b) the proposed reconstruction would cause the structure to be located other than on the original footprint upon a finding that that the reconstruction will not result in substantial detriment to the neighborhood. Such special permit shall be obtained prior to voluntary demolition.

5.8 REVERSION TO NONCONFORMITY.

No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use.

5.9 SUBSTANDARD LOTS.

When a prior lawful nonconforming structure is located on a lot which does not meet current dimensional requirements, such lot shall not be changed, unless the change does not result in an increase of an existing nonconformity or a new nonconformity.

5.10 EMINENT DOMAIN.

When a lot is changed by eminent domain so as to become deficient in area, frontage, building setback, or lot coverage, any structure located thereupon shall be considered a nonconforming structure subject to the rules of this Section 5.0.

§ 190-49. Nonconforming use of structure.

Nonconforming use of a structure is herein defined as a use of a building, lot or structure that does not conform to a use regulation prescribed by this chapter for the district in which it is located but which was in existence at the time the use regulation became effective and was lawful at the time it was established.

§ 190-50. Continuation and extension. [Amended 5-5-1997 ATM by Art. 40]

Except as hereinafter provided, this chapter shall not apply to uses, buildings or structures lawfully in existence or lawfully begun or to a building or special permit issued before the first publication of notice of the public hearing on this chapter required by MGL c. 40A, § 5, as amended, but shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent, except where alteration, reconstruction, extension or structural change to a single or two family residential structure does not increase the nonconforming nature of said structure.

- A. ~~Preexisting single and/or two family residential structures may be reconstructed, changed, extended or altered without the necessity of a public hearing, provided that it is determined that no such reconstruction, change, extension or alteration shall increase the nonconforming nature of said structure.~~ Such determination shall be made by the Board of Appeals or the Zoning Administrator. In the event that such reconstruction, change, extension or alteration increases the nonconformity of said structure, no such reconstruction, change, extension or alteration shall be permitted unless there is a finding by the Board of Appeals pursuant to a public hearing that such reconstruction, change, extension or alteration shall not be substantially more detrimental than the existing nonconformity to the neighborhood.
- B. ~~Preexisting nonconforming buildings, structures or uses (with the exception of single or two family structures) may be changed, extended or altered, provided that no such change, extension or alteration shall be permitted unless there is a finding by the Board of Appeals that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.~~
- C. ~~This article shall not apply to billboards, signs and other advertising devices subject to the provisions of MGL c. 93, §§ 29 through 33, inclusive, and MGL c. 93D.~~

§ 190-51. Abandonment.

Nonconforming uses, buildings or structures abandoned or not used continuously for a period of two years shall be required to conform to the current bylaw provisions.

§ 190-52. Cases where permit is already issued.

~~Nothing herein shall require any change in plans, construction or intended use of a building for which an unexpired permit has heretofore been issued and the construction of which shall be commenced within a period of six months and completed according to such permit within one year after the issuance of the permit.~~

~~§ 190-53. Restoration after fire.~~

~~Any nonconforming structure may be restored and used regardless of the estimated restoration cost, provided that the new or restored structure is not substantially more nonconforming than the former structure.~~

~~§ 190-54. Ruling principle.~~

~~In no instance shall nonconforming uses or structures be made more nonconforming unless the Board of Appeals finds that such additional nonconformity will fulfill the intents and purposes of this chapter and will be in the general welfare.~~

~~§ 190-55. Nonconforming lot.~~

~~A nonconforming lot is a lot which does not meet the current area or frontage requirements for lots in the district in which it is located. Such lot may or may not be buildable depending upon the date it became nonconforming and any applicable exemptions provided by local law or MGL c. 40A.~~