

# *Article 10 Nonconforming Uses, Structures and Lots*

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## **ARTICLE 10 NONCONFORMING USES, STRUCTURES, AND LOTS**

### **SECTION 10.0 PURPOSE**

The purpose of this Article is to address situations where a USE of land or a STRUCTURE legally existed prior to the adoption of this Ordinance but no longer conforms to one (1) or more requirements of this Ordinance. Such a USE of land or a STRUCTURE is known as “NONCONFORMING.” This Article describes how such USES and STRUCTURES may continue and how changes to NONCONFORMING USES and STRUCTURES may occur. The article also addresses NONCONFORMING LOTS and previously approved Special Permit USES.

### **SECTION 10.1 NONCONFORMING STRUCTURES AND USES**

#### **Section 10.1.10 Applicability**

10.1.11 This Ordinance, and amendments thereto, 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 required by M.G.L. Chapter 40A, Section 5, at which this Ordinance, or any part thereof, was adopted or amended.

10.1.12 This Ordinance, and amendments thereto, also shall not apply to a development project (including any future extensions, modifications, alterations or changes to structures or uses thereof), and the LOT(s) on which such development project is located as shown on an endorsed Approval-Not-Required (ANR) plan, if, as of the date of the final City Council vote adopting this Ordinance, the development project has received a Certificate from the Secretary of the Executive Office of Energy and Environmental Affairs with respect to a filed Environmental Notification Form (ENF) for the development project (which ENF included an analysis of traffic impacts and related mitigation).

10.1.13 Prior lawfully existing NONCONFORMING USES and STRUCTURES may continue until ABANDONED, provided that no extension, modification, alteration or change of such USE or STRUCTURE may be made except as provided in this Article 10.

#### **Section 10.1.20 Nonconforming Uses**

NONCONFORMING USES of BUILDINGS, STRUCTURES , and land may continue. Except as otherwise required by M.G.L. Chapter 40A, Section 6, no NONCONFORMING USE of BUILDING, STRUCTURE , or land shall be changed to another USE which is substantially different from the former NONCONFORMING USE, except one which is permitted by this Ordinance in the district in which the USE is located. Whenever a NONCONFORMING USE of land, STRUCTURE or BUILDING has been changed to a conforming USE, it shall not thereafter be changed to a NONCONFORMING USE.

### **Section 10.1.30 Alteration of Nonconforming Structures or Uses**

Preexisting NONCONFORMING STRUCTURES or USES may be extended or altered provided that no extension or alteration shall be permitted unless there is a finding by the permit granting authority or by a Tier 3 Special Permit Review by City Council that such change, extension or alteration shall not be substantially more detrimental than the existing NONCONFORMING USE to the neighborhood. Such findings shall be made by the special permit granting authority provided, however, that when the requested change is solely for the reconstruction, extension, or structural change of a pre-existing NONCONFORMING STRUCTURE with no change to the NONCONFORMING USE, such finding shall be made by the permit granting authority. Such finding shall be in the form of a Tier 3 Special Permit Review by City Council and such special permit shall conform to any subsequent amendments of this ordinance or bylaw unless the use or construction is commenced within a period of not more than six (6) months after issuance of the permit and in the case of construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

### **Section 10.1.40 Abandonment and Non-Use**

Any NONCONFORMING USE of land, BUILDINGS or STRUCTURES not used or VACANT for a period of two (2) years or more shall not thereafter be re-established, except as provided below.

#### **10.1.41 Non-Use, Residential**

- A. A NONCONFORMING residential STRUCTURE consisting of one (1), two (2) or three (3) DWELLING UNITS, may be REUSED for the same USE provided that it complies with all applicable BUILDING CODE requirements.
- B. A NONCONFORMING residential STRUCTURE, consisting of four (4) or more DWELLING UNITS, may be re-established by Tier 3 Special Permit Review by City Council, which shall make its determination taking into consideration the need to productively REUSE older BUILDINGS in the City. In the course of such Special Permit Review the City Council may waive otherwise applicable YARD, BUILDING HEIGHT, and OFF-STREET PARKING requirements.

#### **10.1.42 Non-use, Non-residential and Mixed-use**

Any NONCONFORMING MIXED-USE BUILDING or non-residential STRUCTURE or USE, including but not limited to, MOTOR VEHICLE related USES such as auto repair, auto body, brake and muffler shops, JUNKYARD, STORAGE YARD, CONTRACTORS SHOP or yard, trucking and auto sales, not used or ABANDONED or VACANT for a period of two (2) years or more, shall not be re-established without a Special Permit from the City Council. The City Council shall make its determination based on standards found in Section 12.4 (Tier 3 Special Permits).

### **Section 10.1.50 Restoration of Damaged or Destroyed Buildings**

A NONCONFORMING USE or BUILDING which has been partially damaged by fire, explosion, flood, riot, or other phenomenon, or legally condemned, may be restored and continued as-of-right PROVIDED, however, the estimated cost of such restoration does not exceed one-half (1/2) of the fair value of the BUILDING, based on replacement cost immediately prior to such damage.

### **Section 10.1.60 Agricultural Exemption**

BUILDINGS or land used primarily for AGRICULTURE are exempt from subsections 10.2.20 and 10.2.30 of this section as provided in the Zoning Act, M.G.L. Chapter 40A, Section 3.

### **Section 10.1.70 Restoration of Wall or Roof**

Nothing herein shall prevent the restoration of a wall or roof declared unsafe by the BUILDING COMMISSIONER.

## **SECTION 10.2 NONCONFORMING LOTS**

Any LOT that at the effective date of this Ordinance, that does not meet the LOT AREA and/or FRONTAGE requirements of this Ordinance, but complies with any minimum area, FRONTAGE, width and depth requirements in force at the time the LOT was lawfully laid out by plan or deed, duly recorded, or any LOT shown on a plan endorsed with the words “Approval under the Subdivision Control Law not required”, or words of similar import, may be built upon for residential use, provided that such LOT is in a district zoned residential under the provisions of this Ordinance and meets the following additional conditions:

### **Section 10.2.10 A Lot in Single and Separate Ownership**

10.2.11 For purposes of this Section 10.2, “single and separate ownership” shall mean that the owner of a specific LOT does not have a sufficient ownership interest in an adjacent LOT to control the USE and disposition of that LOT. Where one (1) or more owners can control the USE and disposition of adjacent LOTS, such LOTS shall be deemed to be in “common ownership.”

10.2.12 In the case of a LOT held in SINGLE AND SEPARATE OWNERSHIP as of January 1, 1971, a LOT with an area of four thousand (4,000) square feet or more and a FRONTAGE of forty (40) feet or more, may be built upon with the following forms of review:

- A. AS OF RIGHT for SINGLE-FAMILY DWELLING on LOTS with an area of at least 5,000 square feet and at least fifty (50) feet of FRONTAGE.
- B. Subject to Tier 1 Administrative Site Plan Approval for SINGLE-FAMILY USE only on LOTS of less than 5,000 square feet or fifty (50) feet of FRONTAGE.

Such LOTS may not be used for a TWO-FAMILY DWELLING or MULTI-FAMILY DWELLING.

- C. In addition, the Planning Board may promulgate design standards to guide the design and approval of DWELLINGS built on such NONCONFORMING LOTS. Such standards shall be voluntary for single and TWO-FAMILY DWELLINGS built on LOTS with at least 5,000 square feet of LOT area and fifty (50) feet of FRONTAGE, and mandatory for NONCONFORMING LOTS with less than 5,000 square feet of single LOT area and forty (40) feet of FRONTAGE.

### **Section 10.2.20 Single Lot in Common Ownership with One Adjacent Occupied Lot**

In the case of a single LOT held in ownership common with one (1) ADJACENT LOT that had a DWELLING on it at the time of enactment of this Ordinance or subsequent amendments thereto, a LOT with an area of five thousand (5,000) square feet or more with a FRONTAGE of fifty (50) feet or more, may be built upon for SINGLE-FAMILY or TWO-FAMILY use.

### **Section 10.2.30 Common Ownership of Four or Fewer Lots**

In the case of four (4) or fewer such LOTS held in common ownership with those of ADJACENT land at the time of enactment of this Ordinance or subsequent amendments thereto, such LOTS with an area of five thousand (5,000) square feet or more and with a FRONTAGE of fifty (50) feet or more may be built upon for SINGLE-FAMILY or TWO-FAMILY USE regardless of the date of recording or endorsement.

### **Section 10.2.40 Common Ownership of More Than Four Lots**

In the case of more than four (4) such LOTS held in common ownership with that of adjacent land at the time of the enactment of this Ordinance or subsequent amendments thereto, such LOTS may be built upon for SINGLE-FAMILY or TWO-FAMILY use only if the recording or endorsement occurred within five (5) years prior to the effective date of the amendments that made the LOTS NONCONFORMING, and the LOTS have an area of five thousand (5,000) square feet or more and a FRONTAGE of fifty (50) feet or more. In the case of more than four (4) NONCONFORMING LOTS in common ownership laid out more than five (5) years prior to the effective date of this Ordinance, the LOT LINES must be revised to conform with the minimum LOT size and FRONTAGE enacted as part of this Ordinance or subsequent amendments thereto.

### **Section 10.2.50 Side Yard Exemptions**

In the case of any NONCONFORMING LOT upon which a SINGLE-FAMILY DWELLING or TWO-FAMILY DWELLING can be constructed in conformance with the above provisions, a SIDE YARD of not less than five (5) feet shall be permitted in Residential A-1, A, B, and C Districts, thereby exempting the STRUCTURE from the SIDE YARD requirements of this Ordinance.

### **Section 10.2.60 Merged Lots**

For the purpose of this Ordinance, any NONCONFORMING LOT which is increased in size by eliminating abutting LOT LINES, shall not be considered a new LOT and, therefore, will not have to meet the required minimum LOT size for the district, as long as the total area of the combined LOTS is four thousand (4,000) square feet or more.

### **Section 10.2.70 Alteration of Single and Two-family Structures on Nonconforming Lots**

In the following circumstances, the reconstruction, extension, alteration or change (collectively “alteration”) to a SINGLE OR TWO-FAMILY STRUCTURE on a NONCONFORMING LOT shall not be considered an increase in the NONCONFORMITY and shall be permitted as of right:

#### **10.2.71 Alteration on Lots with Insufficient Area**

Alteration to a STRUCTURE which complies with all current SETBACK, FRONTAGE, and BUILDING HEIGHT requirements, but is located on a LOT with insufficient area, where the alteration will also comply with all of these current requirements;

#### **10.2.72 Alteration on Lots with Insufficient Frontage**

Alteration to a STRUCTURE which complies with all current YARD, LOT AREA, and BUILDING HEIGHT requirements but is located on a LOT with insufficient FRONTAGE, where the alteration will also comply with all of these current requirements.

### **SECTION 10.3 PRE-EXISTING SPECIAL PERMIT USES**

In the case of USES requiring a Special Permit, but existing prior to the date of a Special Permit requirement, the existing BUILDING may be rebuilt and/or expanded up to twenty-five (25) percent of the ground FLOOR AREA and the USE may be expanded up to twenty-five (25) percent of the LOT area, by Administrative Site Plan Review pursuant to Section 12.2. An expansion greater than twenty-five (25) percent shall require Special Permit Review pursuant to Section 12.4.

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