

# *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.
- 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, other than Single and Two-family Structures**

A preexisting NONCONFORMING STRUCTURE may continue to exist and may be reconstructed, extended, altered or changed subject to a finding by majority vote of the Board of Appeals that such reconstruction, extension, alteration or change will not increase the existing nonconformity or create a new nonconformity, and shall not be substantially more detrimental to the neighborhood than the existing NONCONFORMING STRUCTURE.

### **Section 10.1.40 Alteration of Nonconforming Single and Two-family Structures As of Right**

In the following circumstances, the reconstruction, extension, alteration or change (collectively “alteration”) to a SINGLE or TWO-FAMILY residential DWELLING shall **not** be considered an increase in the NONCONFORMING nature of the STRUCTURE and shall be permitted AS OF RIGHT regardless of whether or not the LOT complies with the current LOT AREA and/or FRONTAGE requirements in Article 5.

#### **10.1.41 Nonconforming Yards**

- A. Alteration to a STRUCTURE which violates the SIDE, REAR, and FRONT YARD, or OFF-STREET PARKING requirements, as long as such change does not further violate the SIDE, REAR, FRONT YARD, or OFF-STREET PARKING requirements. This shall not apply to the enclosure of pre-existing unenclosed PORCHES.
- B. Alteration of a STRUCTURE which encroaches into one or more required YARDS, including the addition of a story within the existing encroachment area, where the alteration will comply with all current YARD and BUILDING HEIGHT requirements;
- C. Alteration to the side or facade of a STRUCTURE which encroaches upon a required YARD area, where the alteration will not increase the existing encroachment.

### **Section 10.1.50 Alterations of Nonconforming Single and Two-family Structures Subject to a Finding**

NONCONFORMING SINGLE and TWO-FAMILY residential STRUCTURES may be reconstructed, extended, altered or changed in all instances other than those set forth in Section 10.1.40 subject to a finding by majority vote of the Board of Appeals that such reconstruction, extension, alteration or change will not be substantially more detrimental to the neighborhood than the existing NONCONFORMING STRUCTURE.

## **Section 10.1.60 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.

### **10.1.61 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 2 Site Plan Review by the Planning Board, which shall make its determination taking into consideration the need to productively REUSE older BUILDINGS in the City. In the course of such Site Plan Review the Planning Board may waive otherwise applicable YARD, BUILDING HEIGHT, and OFF-STREET PARKING requirements.

### **10.1.62 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 Planning Board. The Planning Board shall make its determination based on standards found in Section 12.4 (Tier 3 Special Permits).

## **Section 10.1.70 Restoration of Damaged or Destroyed Buildings**

### **10.1.71 Partial Damage**

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.

### **10.1.72 Substantial Damage**

Where a NONCONFORMING USE or BUILDING that has been substantially damaged or destroyed by fire, explosion, flood, riot, or other phenomenon, and the estimated cost of restoration will exceed one-half of the fair value of the BUILDING, such USE or BUILDING may be restored to its condition immediately prior to such damage or destruction by Tier 3 Special Permit review, but it may not be enlarged.

- A. The construction of a new SINGLE-FAMILY DWELLING or TWO-FAMILY DWELLING is allowed; so long as the other provisions of 10.1.73 are met, and
- B. “On the same footprint” means that the footprint of the new or rebuilt Dwelling does not have to be identical, so long as the new footprint comes no closer to the Lot Lines than the closest point of the old footprint regarding each Lot Line (or meets the required Yard, whichever is closest to the Lot Line), and
- C. “Destroyed” includes elective demolition of dilapidated buildings.

### 10.1.73 Continuance of Nonconforming Use

- A. The NONCONFORMING USE of a BUILDING or STRUCTURE protected by subsections 10.1.71 and 10.1.72 above may be resumed, but it may not be increased or extended or changed to another NONCONFORMING USE.
- B. Notwithstanding subsections 10.1.71 and 10.1.72 above, a NONCONFORMING SINGLE or TWO-FAMILY DWELLING UNIT that has been partially or completely damaged or destroyed may be rebuilt AS OF RIGHT on the same footprint and to the same height as the damaged or destroyed BUILDING.

### Section 10.1.80 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 10.1.90 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.
- 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.

**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 Special Permits, but existing prior to the date of a Special Permit requirement, the existing BUILDING may be 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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