

# Planning & Sustainability • City of Northampton

resilience | regeneration | design | conservation | placemaking | mobility | accessibility | community development | historic | zoning | GIS | agriculture

---

Carolyn Misch, AICP, Assistant Director • CMisch@NorthamptonMA.gov • 413-587-1287

TO: City Council Committee on Legislative Matters

FROM: Carolyn Misch, Assistant Director Office of Planning & Sustainability

DATE: March 2, 2020

RE: Ordinance 19.173 (Zoning Amendment to Non-Conformities) & Review of Public Comments  
February 10, 2020

As a follow up to the initial public hearing held by Legislative Matters, I would like to reiterate the key components of the proposed ordinance:

- 1) Creates consistency:
  - a. Within 9.3-See attached (B) ordinance showing other sections of 9.3 where non-conformities are allowed by right in situations where all other zoning compliance is being met.
  - b. Within other parts of the zoning where the codes encourage infill in existing neighborhoods (where many nonconformities exist due to the fact that lots were built prior to existence of zoning.)
  - c. Eliminates a barrier and back door denial of the very projects that are encouraged throughout the rest of zoning.
- 2) Maintains development review of projects. This will not eliminate review criteria spelled out in the special permitting and site plan review sections. (see attached-C)
- 3) Provides a clear review path for all lots, ensuring that they are treated more equally.
- 4) OF NOTE: Frontage and depth are 2 of the components that can be non-conforming. There are several districts in Northampton that have no frontage or depth requirements. Thus is it neither inconsistent to allow these to be redeveloped by right nor does it make it impossible to utilize such lots.

Below are comments/issues raised on February 10, 2020 and staff response in italics below:

- Take your time on this ordinance because there are hundreds & hundreds of properties affected  
*There may be many non-conformities within the city. However, only a small subset of all nonconformities are being addressed by this subsection of 9.3 B2. Other sections apply in other situations—see attachment B with all of 9.3 -*
- Complaints raised about issues surrounding a single project (trees, parking, structure size, location, carports). Concern that the Board does not see the project the same way as the abutters.  
*These are special permit criteria not related to pre-existing non-conformities. The rules would remain and the Board is charged with evaluating all aspects of a project. Further, given that*



***there are unique lots in parts of downtown that do not fit neatly into the confines of the zoning (non-conformities), the Board must evaluate these lots with discretion in a way that simple parcels on conforming rectangles are not evaluated. 9.3 is distinct and should not be used to counter or remove the ability for other Boards to look at this.***

- Maintain the prohibition on reusing non-conforming lots as another check against development (eg to protect trees for climate resiliency)

***The zoning ordinance addresses specific issues related to tree replacement and tree protection (see attachment D) as well as traffic mitigation, design etc. These are site plan issues that have specific requirements elsewhere in the code. The city should be transparent about what development requirements are necessary to obtain permits for the public, for neighbors, for applicants, for the press. Creating back-door impediments through use of non-conformities diminishes the effectiveness of an open and transparent process.***

- We need to create a streetscape and that is the biggest issue (Graves Avenue as a standard)

***Graves Avenue was never determined to be the model for the City. Regardless, streetscape standard review is a project review issue performed by the Planning Board. The Board is charged with evaluating all sites and has the discretion to consider lots that do not fit neatly into the design standards –especially those lots that predate the recently created standards. The ability to reuse parcels that do not fit into the neat package of a rectangle along a new street makes Northampton the varied and high value City that it is. Many residents have said this is why Northampton is unique. Not every home, building, parcel looks like every other one. It is not Disney and it is not a uniformly planned development like many newer communities and new subdivisions.***

***Under the Special permit review, the Board must consider alternatives to strict adherence with the streetscape standards and whether there are other ways to meet this. The site plan review and special permit criteria review by the Board is an important tool that allows for creative reuse of a parcel to provide necessary housing for people of a broad range of incomes. It allows property owners to afford to stay in their homes as their family situations change, offering them means of income to maintain their homes.***

***Interestingly, Graves Avenue has parcels that do not meet the minimum frontage requirements and these would be barred from changes by this ordinance if it is not modified.***

- No Proponents were present-

***As you know, most people only show up to public meetings when they oppose something and not when they are comfortable with something. Further, social media is an effective tool to encourage opponents to come out. That does not mean that this is representative of the majority of the community***

- These are “Bad Lots” and lots that “should not be used”:

***These lots are functioning, viable lots that have been in existence for 10-50-100 years and were established based on the functionality of the times in which they were created. Zoning is a system to develop uniform standards for NEW lots to establish perfect rectangles along the***

***street. Many of the lots that predate 1975 are not perfect rectangles nor do they all meet the elements that are currently in the zoning.***

***Northampton has different frontage and depth standards in different districts and in some cases does not require any frontage. (see attached examples)***

- Finally, the Committee was asked to consider a finding standard instead of allowing non-conforming lots to be allowed to be redeveloped by right.

If the Council were to consider that as an alternative, Legislative Matters might discuss either:

- 1) Require a Finding, with detailed review criteria for the ZBA for parcels that do not otherwise trigger a Planning Board review. Specifically, this would include any project that does not result in the construction of more than 6 new parking spaces or a project that does not involve the new construction of 2,000 square feet of floor area.

Or, a more restrictive approach, not recommended by staff, would be:

- 2) Require a Finding for construction of up to 6 units. This would result in applicants being asked to obtain two permits. One from the Zoning Board of Appeals and a second one, which is currently already required, from the Planning Board for Site Plan Review.

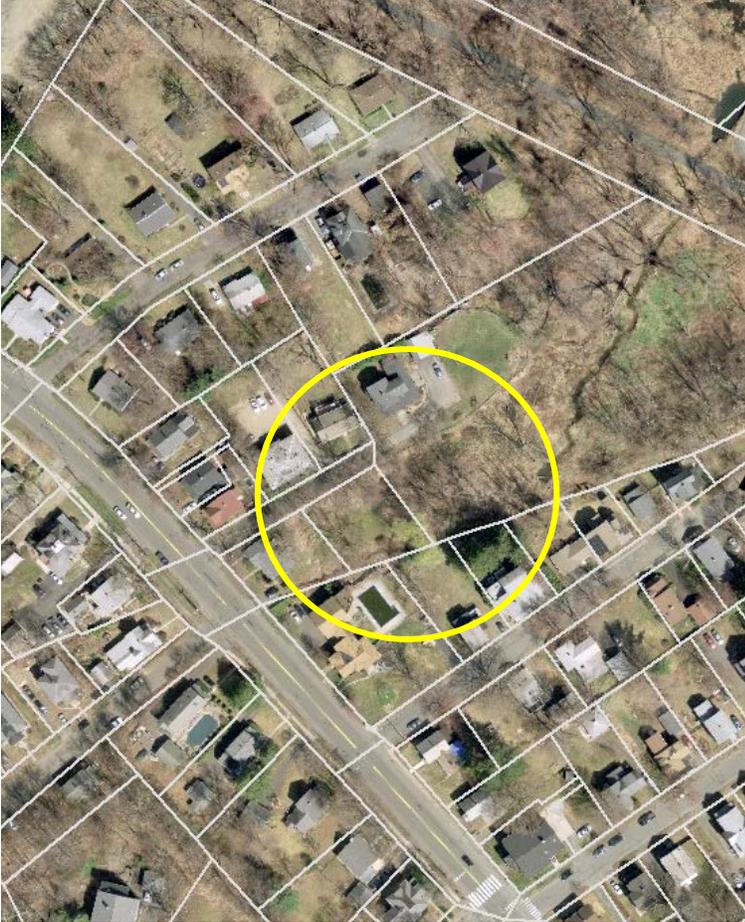
Given that special permit is a much more detailed and difficult permit to obtain, staff would not recommend that a second Zoning Board permit for those projects that already trigger a special permit. These are projects that result in 7+ units.

In either scenario, staff would recommend that if a Finding were required for the modification of a use on a pre-existing non-conforming lot that the ZBA's review be defined and focused on the change as it relates to the non-conforming element. This creates clear guidance for the public, property owners, and prospective buyers and/or project proponents of what to expect in a hearing instead of leaving a vague standard that currently exists in 9.3 for a Finding.

For example, if an owner of a two-family on a parcel that only had 65' of depth instead of the required 75' depth applied to convert the structure to a 6-unit multifamily, the ZBA would be charged to evaluate whether the change from a 2 family to a 6 family was substantially more detrimental to the neighborhood as it relates to depth if 4 more units are added. Thus, the Board would look at the relationship of the structure(s) to the rear lot line and in relation to lots in the neighborhood that might have the required depth and to those others that might not have the right depth were adjacent to a lot that had 75' of depth. The ZBA would not look at the same elements that the Planning Board evaluates like lighting, trees, landscaping parking lot layout. (These elements and more are standardize by the zoning and must be evaluated by the Planning Board)

## ATTACHMENTS

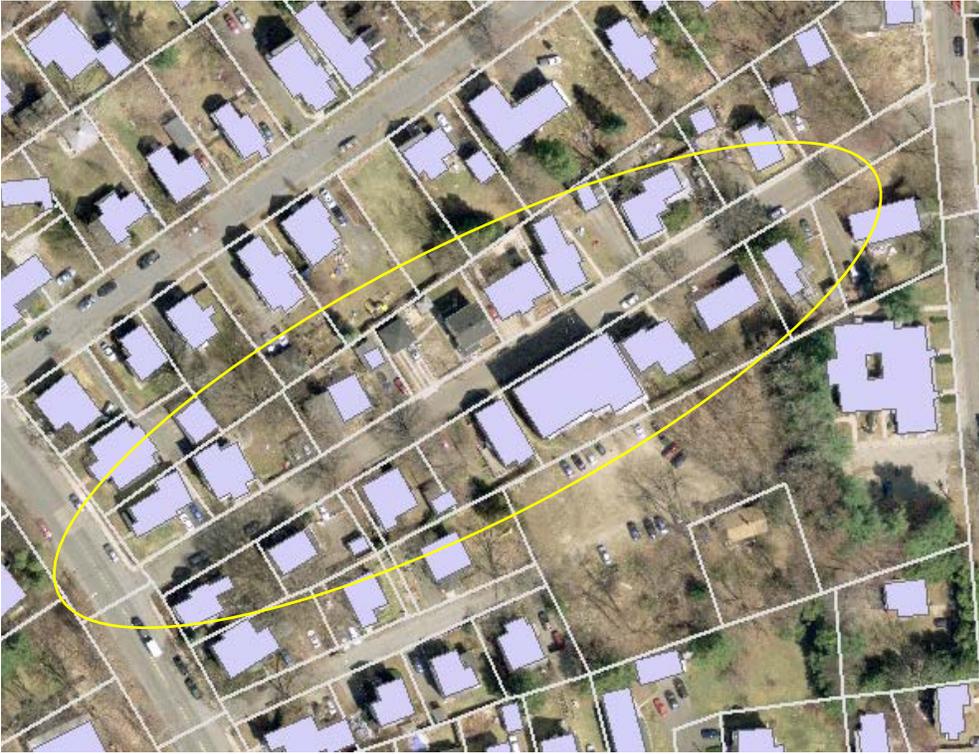
- A. Examples in the City that show non-conforming lots  
1) Lots without frontage- but substantial lot size



- 2) Lots with less frontage and depth but meeting minimum lot size



3) Substantial portion of the street does not meet depth because of the way that it was created.



SEE ATTACHMENTS within Separate Documents:

- B (existing 9.3)
- C(special permit criteria)
- D (significant tree)