

Planning & Sustainability • City of Northampton

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

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The Northampton Planning Board

Minutes of Meeting

January 9, 2020

Council Chambers, 212 Main St., Northampton, MA

Members Present:		Time
	, Chair	
<input checked="" type="checkbox"/>	Marissa Elkins	
<input checked="" type="checkbox"/>	Sam Taylor	
<input checked="" type="checkbox"/>	Euripedes DeOliveira	
<input checked="" type="checkbox"/>	Alan Verson	
<input checked="" type="checkbox"/>	George Kohout, Acting Chair	
	Christa Grenat	
	Janna White, Associate Member	
<input checked="" type="checkbox"/>	David Whitehill, Associate Member	

Staff:

	Planning Director, Wayne Feiden	
<input checked="" type="checkbox"/>	Senior Planner, Carolyn Misch	

7:00 PM George Kohout opened the public comment. There was none.

7:00 PM George Kohout opened the application for Special Permit with Site Plan for a Residential Cluster Open Space, Flag Lot, Shared Driveway and site improvements, submitted by the City of Northampton Office of Planning & Sustainability 254 Old Wilson Rd, Florence, Map ID 44-14.

Wayne Feiden, Director Office of Planning & Sustainability, presented the overall scope of the project and goals for the open space portion of the site.

Alan Verson asked about orientation of the site relative to the proposed self-storage project.

Feiden noted the proximity of the project to Easthampton Road.

Chris Chamberland, Berkshire Design Group, LLC presented the layout plan and design for the lots.

George Kohout asked about utilities for the five lots.



Chamberland described the location of the utilities.

Alan Verson asked about drywells.

Chamberland described the stormwater system.

George Kohout asked about electric service location.

Chamberland showed the location of the trenching for the electrical.

George Kohout asked about the shared driveways dimensions and waiver requested.

Debra August, 50 Old Wilson Road asked for clarification on the location of the lots.

Staff described the location.

David Whitehill asked about the driveway grades.

Staff described proposed condition recommended by the Fire Department for sprinklers to be located in the homes that were located beyond the 10% slopes.

The Board discussed conditions.

1. Prior to issuance of a building permit,
 - a. the applicant shall submit revised final civil construction plans, signed and sealed by a Massachusetts registered P.E., to the DPW for review and approval at least 15 days prior to the issuance of any City building or construction permits.
 - b. Record easements for maintenance and access for shared driveway.
 - c. Applicant must submit plans showing roof plans capable of holding PV arrays.
 - d. The applicant must have the tree protection area installed and inspected to ensure adequate protection of the trees that are to be saved.
 - e. The area dedicated for open space shall be, as offered, granted to the City.
2. **General Conditions:**
 - a. Sprinklers shall be installed on all lots that are located off the portion of the driveways that exceed 10% (in houses on Lots 3 and 4.
3. **Conditions Prior to Certificate of Occupancy**
 - a. The applicant shall replace the trees or make a payment-in-lieu of replacement in accordance with 350-12.3

Upon motion by Alan Verson and second by Marissa Elkins, the Board voted unanimously to close the hearing.

Upon motion by Euripedes DeOliveira and second by Alan Verson the Board voted unanimously to grant the permit with conditions as discussed and with waiver for driveway grades.

8:00 PM George Kohout opened the permit amendment request by St Elizabeth Ann Seton Parish to modify parking lot layout, 99 King St Map Id 31B-159 & 192.

Terry Reynolds, engineer representing the applicant, described the proposed changes.

The Board discussed the modified layout, landscaping and lighting and the following conditions:

1. the applicant shall submit revised final civil construction plans, signed and sealed by a Massachusetts registered P.E., to the DPW for review and approval at least 30 days prior to the issuance of any City building or construction permits. The stamped construction plans shall include plans at a scale of 1" = 20' that shall provide sufficient detail and spot grading for construction and show:
 - specify for sewer laterals to be installed in 6" stone bedding consistent with DPW specifications.
 - Re location of 2 proposed trees in the northeast corner of the main entrance to eliminate conflict with sewer line.
 - existing granite curb radius on the south side of the driveway to be widened shall be removed and reset.
 - sewer manhole inverts based on test pits that establish the depth of the existing sewer service.
 - Create a note that stakes will be used for anchors, as required.
 - Revise Detail 7 to create consistent type and percentage of stone
 -
 - Two trees flanking the driveway at the edge of the parking lot should be planted.
1. The 3000K lighting option shall be installed.
2. The alternative fixture submitted at the hearing shall be used
3. The parking lot lights should be put on a timer to go off at 10 PM.
4. Prior to final sign off of the construction, the applicant shall Lighting As-built.

Upon motion by Alan Verson and second by Marissa Elkins the Board voted unanimously to close the hearing.

Upon motion by Alan Verson and second by Marissa Elkins the Board voted unanimously to approve the permit with conditions discussed.

8:30 PM George Kohout opened the site plan permit request by Cellco Partnership/Verizon Wireless Site Plan telecommunications equipment on existing pole, Three-County Fairgrounds 54 Fair St Map Id 25c-251.

Ellen Freyman, Shatz Schwartz, Fentin representing Verizon provided the project overview and described the need to replace the 24' pole with 41' tall with light and speaker.

Jesse Moreno, Engineer Pro Terra Group described the site details on the plan set.

Upon motion by Marissa Elkins and second by David Whitehill the Board voted unanimously to close the hearing.

Upon motion by Marissa Elkins and second by David Whitehill, the Board voted unanimously to approve the permit.

8:41 PM George Kohout opened the amendment request for Syncarpha Northampton to relocate underground utilities to overhead poles at Park Hill Rd, Florence, Map Id 49-12.

Devin Howe, Beals and Associates Engineers, presented the request for the modification.

Sam Taylor asked about location of the underground electrical lines vs. the above ground.

Staff described Department of Public Works comments.

Staff described issue about screening of Skinner lot.

Mary Carol Skinner, 809 Park Hill Road stated that she wants her property line screened.

Staff described the requirements and Board discussed the proposed changes.

Chris Stevens, resident from 18 Dewey Court noted that 6' trees do not grow quickly.

Graeme Dutkowsky, Syncharpha, stated they would be willing to plant different species along the border.

Upon motion by Euripedes DeOliveira and second by Marissa Elkins second, the Board voted unanimously to close the hearing.

Upon motion by Marissa Elkins and second by Euripedes DeOliveira, the Board voted unanimously to approve the amendment for the installation of 3 above ground poles for interconnection.

8:20 PM George Kohout opened the hearing on the proposed Zoning Amendment 350-9.3 (B1 & 2) to allow modifications to non-conforming lots when changes meet all the zoning requirements except for the existing non-conformities.

Staff described the proposed ordinance amendments and the rationale behind the changes.

John McGlaughlin, attorney representing appellant of 34 Dewey Court project, spoke in opposition to the proposed amendment arguing that he would lose his appeal if the amendment were adopted. Further, he distributed ordinances from other Valley communities showing they do not treat non-conformities in this manner and the city should not be allowing more than a single or two family home on non-conforming lots.

Mark Moggio, owner of 24 Dewey Court, argued that the change would allow too much development.

Farnsworth Lowenstein, 18 Dewey Ct raised concern about how the changes in the ordinances in 2013 were adopted to allow single and two family units, not multi family units.

Ann-Marie Moggio, 445 Spring Street, raised concern about the Board not having oversight to address impacts that development has on neighborhoods.

The Board discussed the ordinance amendment.

Upon motion by Euripedes DeOliveira and second by Marissa Elkins the Board voted unanimously to close the hearing.

Upon motion by Euripedes DeOliveira and second by Marissa Elkins, the Board voted unanimously to recommend that council adopt the amendment.

Staff presented the ANR for the 5 new lots on Old Wilson Road.

Upon motion by Marissa Elkins and second by Euripedes DeOliveira, the Board voted unanimously to have the plans endorsed.

Jan 9 2020
Minutes

**City of Northampton
MASSACHUSETTS**



In the Year Two Thousand Nineteen

Upon the Recommendation of Mayor David J. Narkewicz and Planning & Sustainability

An Ordinance of the City of Northampton, Massachusetts, providing that the Code of Ordinances, City of Northampton, Massachusetts, be amended by changing Section 350-9.3 B1 & 2 to be consistent with other sections of 9.3.

Be it ordained by the City Council of the City of Northampton, in City Council assembled, as follows:

Amend as shown

§350-9.3 Change, extension or alteration of legally preexisting nonconforming structures, uses, or lots.

Legally preexisting nonconforming structures, uses, or lots may be changed, extended or altered as set forth below, except as noted in § 350-9.2A above. If a use is not eligible under one subsection, proceed to the next subsection.

B. A conforming use on a preexisting nonconforming lot: A conforming use on such a lot may be changed, extended or altered:

(1) As-of-right to the same or different conforming use in a conforming structure, which meets all the dimensional, and density provisions of the current zoning, except for the elements that are pre-existing non-conforming dimensional elements lot size, frontage, or depth and when the lot size, frontage, and depth requirements do not change.

(2) ~~With a finding from the Zoning Board of Appeals when said change, extension or alteration is to a different conforming use which requires the same or less minimum lot area, minimum lot width and frontage, minimum lot depth, setbacks, and parking than is required for the present use (and lot does not fully conform to the present zoning requirements for the proposed use).~~

Renumber subsequent subsections based upon the deletion above.

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title VII. Cities, Towns and Districts (Ch. 39-49a)
Chapter 40A. Zoning (Refs & Annos)

M.G.L.A. 40A § 5

§ 5. Adoption or change of zoning ordinances or by-laws; procedure

Effective: June 30, 2009

Currentness

Zoning ordinances or by-laws may be adopted and from time to time changed by amendment, addition or repeal, but only in the manner hereinafter provided. Adoption or change of zoning ordinances or by-laws may be initiated by the submission to the city council or board of selectmen of a proposed zoning ordinance or by-law by a city council, a board of selectmen, a board of appeals, by an individual owning land to be affected by change or adoption, by request of registered voters of a town pursuant to section ten of chapter thirty-nine, by ten registered voters in a city, by a planning board, by a regional planning agency or by other methods provided by municipal charter. The board of selectmen or city council shall within fourteen days of receipt of such zoning ordinance or by-law submit it to the planning board for review.

No zoning ordinance or by-law or amendment thereto shall be adopted until after the planning board in a city or town, and the city council or a committee designated or appointed for the purpose by said council has each held a public hearing thereon, together or separately, at which interested persons shall be given an opportunity to be heard. Said public hearing shall be held within sixty-five days after the proposed zoning ordinance or by-law is submitted to the planning board by the city council or selectmen or if there is none, within sixty-five days after the proposed zoning ordinance or by-law is submitted to the city council or selectmen. Notice of the time and place of such public hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing, and by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of said hearing. Notice of said hearing shall also be sent by mail, postage prepaid to the department of housing and community development, the regional planning agency, if any, and to the planning board of each abutting city and town. The department of housing and community development, the regional planning agency, the planning boards of all abutting cities and towns and nonresident property owners who may not have received notice by mail as specified in this section may grant a waiver of notice or submit an affidavit of actual notice to the city or town clerk prior to town meeting or city council action on a proposed zoning ordinance, by-law or change thereto. Zoning ordinances or by-laws may provide that a separate, conspicuous statement shall be included with property tax bills sent to nonresident property owners, stating that notice of such hearings under this chapter shall be sent by mail, postage prepaid, to any such owner who files an annual request for such notice with the city or town clerk no later than January first, and pays a reasonable fee established by such ordinance or by-law. In cases involving boundary, density or use changes within a district, notice shall be sent to any such nonresident property owner who has filed such a request with the city or town clerk and whose property lies in the district where the change is sought. No defect in the form of any notice under this chapter shall invalidate any zoning ordinances or by-laws unless such defect is found to be misleading.

Prior to the adoption of any zoning ordinance or by-law or amendment thereto which seeks to further regulate matters

§ 5. Adoption or change of zoning ordinances or by-laws; procedure, MA ST 40A § 5

established by section forty of chapter one hundred and thirty-one or regulations authorized thereunder relative to agricultural and aquacultural practices, the city or town clerk shall, no later than seven days prior to the city council's or town meeting's public hearing relative to the adoption of said new or amended zoning ordinances or by-laws, give notice of the said proposed zoning ordinances or by-laws to the farmland advisory board established pursuant to section forty of chapter one hundred and thirty-one.

No vote to adopt any such proposed ordinance or by-law or amendment thereto shall be taken until a report with recommendations by a planning board has been submitted to the town meeting or city council, or twenty-one days after said hearing has elapsed without submission of such report. After such notice, hearing and report, or after twenty-one days shall have elapsed after such hearing without submission of such report, a city council or town meeting may adopt, reject, or amend and adopt any such proposed ordinance or by-law. If a city council fails to vote to adopt any proposed ordinance within ninety days after the city council hearing or if a town meeting fails to vote to adopt any proposed by-law within six months after the planning board hearing, no action shall be taken thereon until after a subsequent public hearing is held with notice and report as provided.

No zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are two branches, or by a two-thirds vote of a town meeting; provided, however, that if in a city or town with a council of fewer than twenty-five members there is filed with the clerk prior to final action by the council a written protest against such change, stating the reasons duly signed by owners of twenty per cent or more of the area of the land proposed to be included in such change or of the area of the land immediately adjacent extending three hundred feet therefrom, no such change of any such ordinance shall be adopted except by a three-fourths vote of all members.

No proposed zoning ordinance or by-law which has been unfavorably acted upon by a city council or town meeting shall be considered by the city council or town meeting within two years after the date of such unfavorable action unless the adoption of such proposed ordinance or by-law is recommended in the final report of the planning board.

When zoning by-laws or amendments thereto are submitted to the attorney general for approval as required by section thirty-two of chapter forty, he shall also be furnished with a statement which may be prepared by the planning board explaining the by-laws or amendments proposed, which statement may be accompanied by explanatory maps or plans.

The effective date of the adoption or amendment of any zoning ordinance or by-law shall be the date on which such adoption or amendment was voted upon by a city council or town meeting; if in towns, publication in a town bulletin or pamphlet and posting is subsequently made or publication in a newspaper pursuant to section thirty-two of chapter forty. If, in a town, said by-law is subsequently disapproved, in whole or in part, by the attorney general, the previous zoning by-law, to the extent that such previous zoning by-law was changed by the disapproved by-law or portion thereof, shall be deemed to have been in effect from the date of such vote. In a municipality which is not required to submit zoning ordinances to the attorney general for approval pursuant to section thirty-two of chapter forty, the effective date of such ordinance or amendment shall be the date passed by the city council and signed by the mayor or, as otherwise provided by ordinance or charter; provided, however, that such ordinance or amendment shall subsequently be forwarded by the city clerk to the office of the attorney general.

A true copy of the zoning ordinance or by-law with any amendments thereto shall be kept on file available for inspection in the office of the clerk of such city or town.

No claim of invalidity of any zoning ordinance or by-law arising out of any possible defect in the procedure of adoption or amendment shall be made in any legal proceedings and no state, regional, county or municipal officer shall refuse, deny or

§ 5. Adoption or change of zoning ordinances or by-laws; procedure, MA ST 40A § 5

revoke any permit, approval or certificate because of any such claim of invalidity unless legal action is commenced within the time period specified in sections thirty-two and thirty-two A of chapter forty and notice specifying the court, parties, invalidity claimed, and date of filing is filed together with a copy of the petition with the town or city clerk within seven days after commencement of the action.

Credits

Added by St.1975, c. 808, § 3. Amended by St.1977, c. 829, §§ 3B, 3C; St.1984, c. 189, § 47; St.1987, c. 685, § 3; St.1991, c. 515, §§ 1, 2; St.1996, c. 258, § 16; St.1998, c. 161, § 255; St.2008, c. 451, § 45, eff. June 30, 2009.

Notes of Decisions (121)

M.G.L.A. 40A § 5, MA ST 40A § 5
Current through Chapter 81 of the 2019 1st Annual Session

End of Document

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Article 10 Nonconforming Uses, Structures and Lots

Section 10.0 Purpose

Section 10.1 Nonconforming Structures and Uses

Section 10.2 Nonconforming Lots

Section 10.3 Pre-Existing Special Permit Uses

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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 4 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 4 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 4 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 12.5 (Tier 4 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 12.5.

HOLYOKE

4.7 NONCONFORMING USES AND STRUCTURES

4.7.1 Applicability.

This zoning ordinance shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by G.L. c. 40A, s. 5 at which this zoning ordinance, or any relevant part thereof, was adopted. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder.

4.7.2 Nonconforming Uses.

The City Council may award 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. The following types of changes to nonconforming uses may be considered by the City Council:

1. Change or substantial extension of the use;
2. Change from one nonconforming use to another, less detrimental, nonconforming use.

4.7.3 Nonconforming Structures, Other Than Single and Two-Family Structures.

The City Council may award 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. The following types of changes to nonconforming structures may be considered by the City Council:

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.

4.7.4 Variance Required.

The reconstruction, extension or structural change of such nonconforming structures so as to increase an existing nonconformity, or create a new nonconformity, including the extension of an exterior wall at or along the same nonconforming distance within a required yard, shall require the issuance of a variance from the Board of Appeals.

4.7.5 Nonconforming Single and Two-Family Structures.

Nonconforming single and two-family residential structures may be reconstructed, extended, altered, or structurally changed upon a determination by the Building Commissioner that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure, and the issuance of a building permit, where applicable. In the event that the Building Commissioner determines that the nonconforming nature of such structure would be increased by the proposed reconstruction, extension, alteration, or change, the City Council may, by special permit, allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

4.7.6 Abandonment or Non-Use.

Except as otherwise provided herein, 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 zoning ordinance.

4.7.7 Reversion to Nonconformity.

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

4.8 HOME OCCUPATION

4.8.1 As of Right.

A home occupation may be allowed as of right, provided that it:

1. Is conducted solely within a dwelling and solely by the person(s) occupying the dwelling as a primary residence;
2. Does not exhibit any exterior indication of its presence or any variation from residential appearance;
3. Does not produce any customer, client, student or pupil trips to the occupation site and has no nonresident employees;
4. Is registered with the City Clerk and an annual fee of \$100.00 is paid.

4.8.2 By Special Permit.

A home occupation may be allowed by special permit issued by the City Council, provided that it:

1. Is clearly incidental and secondary to the use of the premises for residential purposes;
2. Does not produce offensive noise, vibration, smoke, dust, odors, heat, lighting, electrical interference, radioactive emission or environmental pollution;
3. Does not utilize exterior storage of material or equipment (including the parking of commercial vehicles);
4. Is conducted within a dwelling, or within a building accessory to a dwelling, solely by the person(s) occupying the dwelling as a primary residence and, in addition to the residents of the premises, by not more than one (1) additional employee not a resident;
5. Does not exhibit any exterior indication of its presence, or any variation from residential appearance, except for a sign or name plate in compliance with this Ordinance.

Such special permit may be granted subject to conditions including, but not limited to, restriction of hours of operation, maximum floor area, off-street parking, and maximum number of daily customer vehicle trips.

SECTION 5.0 DIMENSIONAL CONTROLS

5.1 BASIC REQUIREMENTS.

No structure hereafter constructed or altered in any district shall be located on a lot not meeting the dimensional requirements set forth in this section.

5.1.1 Lot Shape.

Lots which are so distorted in configuration as to be detrimental to public health, safety, welfare or convenience, even though complying with the dimensional requirements established herein, shall not be allowed. The mean direction of side lot lines shall be as close as possible to perpendicular to the street line or to its tangent at the point of intersection of the side lot line. In no case shall the mean direction of the side lot line form an angle of less than seventy-five (75°) degrees with the street line or the aforesaid tangent.

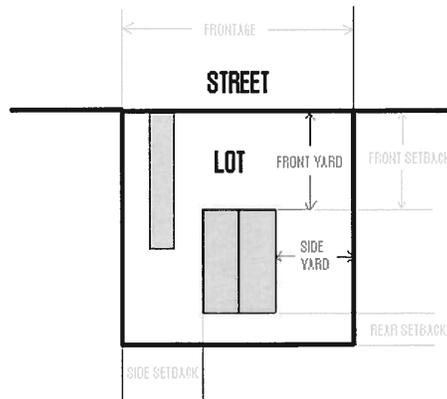
5.1.2 Frontage.

Frontage may be measured either at the street line or at the rear line of the required front yard; however, in no case may the sum of these two lines be less than one and eight-tenths times the required frontage dimension. In the case of corner and through lots one street line only shall be accepted as the front street line for the measurement of frontage. On a corner lot, the depth shall be measured from the same street line that is accepted as the front street line for the measurement of frontage.



5.1.3 Yards.

The minimum front yard dimensions required in the schedule are to be measured from the street line where a plan of the street is on file in the City Engineer's office, or, in the absence of such a plan, from a line twenty-five (25') feet from and parallel to the apparent centerline of the traveled way or street. On all corner and through lots the required front yard dimension shall apply from both street lines. The required side yard dimension shall apply from all other lot lines. Where a front yard is required on a corner lot, no structure, fence or planting shall be introduced or maintained in said front yard area in a manner which interferes with traffic visibility across the corner.



5.1.4 Dwellings in Nonresidential Districts.

Dwellings and public and semipublic uses permitted in business or industrial districts shall be subject to the dimensional controls of the residence district situated nearest to the premises.

5.1.5 Exemptions.

1. Nonconforming lots of record and other lots specifically exempted under G.L. c. 40A, s. 6 are exempted from the provisions of this section, provided such lots have an area of at least 5,000 square feet and a frontage of at least fifty (50') feet.
2. The yard requirements of this section shall not apply to any necessary retaining wall, nor to any wall or fence less than five (5') feet high, except as required for corner visibility see section 5.1.2 above).
3. Open porches, steps, stoops, bay windows, balconies, and eaves, cornices and the like may extend up to five (5') feet into any required yard.
4. Any business or manufacturing structure or use of land lawfully in existence on the effective date of this ordinance in business and industrial districts is exempt from the dimensional controls of this ordinance; however, all alterations and additions to such structures or uses of land shall be in conformity with this ordinance.
5. The limitation on height of buildings and structures in the schedule shall not apply in any districts to chimneys or ventilation towers, whether freestanding or connected to a principal structure, spires or other ornamental features of buildings, provided such features are in no way used for living purposes and are not expressly prohibited elsewhere in this ordinance.

5.1.6 Division of Nonconforming Lots.

A lot or parcel of land containing two (2) or more dwellings existing at the time of adoption of this ordinance which cannot be divided in conformity with these requirements may, with the approval of the Planning Board, be divided in a manner complying as closely as possible with these requirements. Division of all other parcels of land shall be in accordance with this section. No more than one (1) dwelling unit shall be built upon any single lot, except as specifically permitted elsewhere in this ordinance.

- 3) For a sign consisting of individual letters, numerals, designs, and symbols attached to or painted directly on the surface of a building, wall, window, awning, canopy or other approved surface with no other structure or background, the surface area of the sign shall be considered to be that of the smallest quadrangle which encompasses all of the letters, numerals, designs, colors and symbols constituting the sign's display.
- 4) For a sign with display areas or surfaces mounted on two surfaces of the same structure, or on parallel and back-to-back structures within 12" of one another, or where the interior angle formed by two display surfaces on a single structure is 60 degrees or less, the display area of a single side—the larger side when there is a difference—shall constitute the total surface area for the purposes of this Bylaw. Where the interior angle formed by the two display surfaces is greater than 60 degrees, the combined area of both display surfaces shall be considered one surface for the purpose of establishing maximum surface area.

SECTION 8.1 RESIDENTIAL DISTRICTS

In all Residence Districts, the following exterior signs are permitted on private property, and no others::

8.10 Numbers of Signs and Dimensions

8.100 In the case of a dwelling or use accessory thereto – one (1) sign not over two (2) square feet in area for each household residing on the premises, not to exceed a total of eight (8) square feet in area, indicating the address and/or names of the owners or occupants and one (1) sign not over eight square feet in area pertaining to the accessory use.

8.101 In the case of a permitted or authorized use other than a dwelling or use accessory thereto, or in the case of sale or lease of the premises – two (2) signs pertaining to such use, sale or lease provided that the combined total area of such signs clearly visible from any point off the premises shall exceed twelve (12) square feet only under a Special Permit issued by the Special Permit Granting Authority.

In the R-VC District only, the Special Permit Granting Authority may grant a Special Permit for two (2) signs pertaining to an accessory use, where the combined total area of such signs clearly visible from any point off the premises shall not exceed twelve (12) square feet, with any single sign not to exceed eight (8) square feet in area.

8.102 In the case of a fraternity or sorority – one (1) sign identifying the group residing on the premises and not to exceed twelve (12) square feet in area.

8.103 No sign allowed under this section shall exceed four feet (4') in height above grade, except that projecting signs with a total area of three square feet or less may be up to six feet (6') in height above grade.

8.104 There shall be no front setback requirement for signs allowed on private property under this section, except that no sign shall be set closer to any public sidewalk than 30 inches (30").

Signs shall be set back from any side or rear property boundary a distance equal to or greater than their height above grade. On corner lots, no sign or portion thereof shall be located within the clear sight triangle, as defined in Section 6.27.

8.11 No billboard, nor any sign on which the principal product or service advertised is not regularly produced or available on the premises, shall be erected or maintained in any Residence District.

8.12 In the case of a fraternity or sorority - one sign identifying the group residing on the premises and not to exceed twelve square feet.

8.13 Political Signs

8.130 Election Signs -- Election signs shall be those signs pertaining to a candidate for election or ballot question. Such signs shall be allowed except each sign shall be erected no earlier than sixty days prior to an election and shall be removed within three days after the election. No such sign shall be located in the clear sight triangle, as defined in Section 6.27.

8.131 Message Signs -- Message signs shall be those signs displaying a political, religious, or other non-commercial message other than that allowed under Sections 8.10 through 8.13 and 8.104. A maximum of two such signs per property shall be allowed. Each sign shall not exceed six square feet in size. No such sign shall be located in the clear sight triangle, as defined in Section 6.27.

SECTION 8.2 BUSINESS AND INDUSTRIAL/RESEARCH PARK DISTRICTS

In all Business and Industrial/Research Park Districts, the following exterior signs are permitted:

8.20 Signs affixed to, suspended from, or incorporated as part of a building, provided that the total area of the sign on a wall shall not exceed 10 percent of the area of that wall.

8.21 A marquee over the principal entrance to a place of public assembly, subject to the provisions of Article III, Section 5 of the Town By-Law.

8.22 Permanent signs identifying a business or facility may be allowed on cloth or fabric structures such as awnings or upon fixed banners under the permitting procedures required under this Bylaw for the use with which they are associated, and shall conform to the provisions of this section.

8.23 In the outlying B-L, the COM, OP, PRP and LI Districts, the following additional signs are permitted:

8.230 One free standing sign, or one monument sign, for each street frontage, subject to the following standards:

1) For any sign located a distance equal to or greater than the required building setback in that zone:

maximum 60 square feet in size
maximum 12 feet high

2) For any sign located half of the distance required for the building setback in that zone:

maximum 30 square feet
maximum 10 feet high;

3) For any sign located between the property line and half the distance required for a building setback in that zone:

Monument sign only

maximum 15 square feet
maximum 6 feet high

8.231 For any parcel with continuous frontage of 300 feet or more, one free standing sign or one monument sign, located the distance equal to or greater than the required building setback:

maximum 80 square feet
maximum 12 feet high

8.232 In the PRP, OP, and LI Districts, one additional monument sign, for identification purposes, subject to the following conditions:

1) The sign shall include the name of the research, office, or industrial park.

- 2) The sign shall be located at the principal street entrance to the park.
 - 3) The sign shall only be allowed where the park was established through an approved subdivision plan.
 - 4) The sign shall only be allowed where there are three (3) or more separate parcels included in the approved subdivision for the park.
 - 5) The sign shall have a maximum height of 10 feet and maximum size of 60 square feet.
 - 6) The sign shall be in accordance with an approved sign plan.
- 8.24 In the B-G, B-VC, B-N Districts and B-L District adjacent to B-G and B-N, the following additional signs are permitted:
- 8.240 One free standing sign, or one monument sign, for each street frontage, subject to the following standards:
- maximum height - 10 feet
maximum size - 25 square feet
- 8.25 For any sign located on a property in a B-VC, B-N, B-L or COM district and also in a National Historic Register District or local historic district, the minimum front setback may be the same as established for business uses in the B-G District, subject to approval of the sign location and design by the permit-granting authority. The authority may approve the proposed sign(s) if it finds that:
- 8.250 The provisions of Section 8.28 have been met with regard to vehicular and pedestrian safety.
- 8.251 The proposed setbacks are consistent with the setbacks of existing signs in the vicinity and/or are consistent with historical precedent for sign locations in the vicinity.
- 8.252 The design of the proposed sign(s) is consistent with the design principles and standards in Section 3.2041, 9).
- 8.253 The sign(s) appropriately identify and reflect the character of the proposed uses of the property.
- 8.26 For properties located within a Business or Industrial/Research Park zone with a vehicular entrance to that property, located on a parcel of land not in the same ownership as the parcel of land on which the principal use is situated, the following signs are permitted:
- 8.260 One free standing or monument sign to be located at the vehicular entrance subject to the following conditions:
- 1) Maximum height - 10 feet.
 - 2) Maximum size - 30 square feet.
 - 3) Such sign shall meet the requirement of Section 8.28.
 - 4) Such sign shall be located on a parcel of land that is immediately abutting the parcel of land of the principal use which is identified by the sign.
 - 5) The sign owner shall submit to the permit granting authority proof of an easement. or other legal document that grants permission to use the subject property for a sign.
- 8.27 All free standing and monument signs shall be located within a landscaped area equal to 150% of the area of the sign.
- 8.28 No free standing or monument sign shall be located in such a manner that it will impair sight distances of pedestrians and/or vehicles at an intersection or at a vehicular or pedestrian entrance to a property.
- 8.29 All signs shall be located on the same parcel of land as the business, location, product or service identified on the sign, except as provided for in Section 8.26.

SECTION 8.3 FLOOD PRONE-CONSERVANCY DISTRICTS

In all Flood Prone-Conservancy Districts the following signs and no others are permitted:

- 8.30 Name plates of the type described in Section 8.10 herein.
- 8.31 Announcement: one or two signs not exceeding a total of twelve (12) square feet in area for the following purposes:
 - 8.310 Advertisement for the sale, rental or lease of the premises.
 - 8.311 Announcement or bulletin board for a public charitable or religious institution.
 - 8.312 Advertisement for a building contractor only while construction is occurring on the site.

SECTION 8.4 NON-CONFORMING AND TEMPORARY SIGNS

- 8.40 Signs legally existing at the time this Bylaw was adopted may continue as non-conforming uses, subject to the provisions of Article 9 hereof.

This provision shall not apply to billboards, signs and other advertising devices subject to the provisions of Sections 29 through 33, inclusive, of Chapter 93, and of Chapter 93D of the General Laws.
- 8.41 An off-site directional or identification sign may be erected and maintained in any district where the Permit Granting Board or Special Permit Granting Authority authorized to act under the applicable section of the Bylaw for the use(s) associated with the sign(s), finds that such signs will serve the public convenience, will not endanger the public safety, and will be of such size, location, and design as will not be detrimental to the neighborhood. Where an off-site directional or identification sign serves a geographic destination but not a specific land use, a Special Permit from the Zoning Board of Appeals shall be required.
- 8.42 Nothing herein shall affect provisions in existing Town By-Laws relating to temporary signs permitted by the Select Board, or posted by the Town or government, nor to the regulation by the Select Board under Article III, Section 5 of the Town By-Laws of signs which extend six inches or more into or over the limits of a public way.
- 8.43 The Building Commissioner may grant a temporary sign permit for temporary exterior signs made of cloth, fabric, vinyl, paper or other similar materials, including banners, pennants and flags, for such purposes as grand openings, going-out-of-business sales and seasonal promotions. A temporary sign permit shall not exceed 3 weeks in duration.

SECTION 8.5 MODIFICATION & WAIVERS

Any section or subsection of Article 8, Sign Regulations, may be waived or modified by the Permit Granting Board or Special Permit Granting Authority authorized to act under the applicable section of the Bylaw for compelling reasons of public convenience, public safety, aesthetics, or site design.

ARTICLE 9 NON-CONFORMING LOTS, USES AND STRUCTURES

SECTION 9.0 OVERVIEW

SECTION 9.1 NON-CONFORMING LOTS

SECTION 9.2 NON-CONFORMING USES AND STRUCTURES

SECTION 9.3 LOCATIONAL REQUIREMENTS IN MIXED USE CENTERS

SECTION 9.0 OVERVIEW

Non-conforming Lots, Uses, and Structures shall be regulated as provided in Chapter 40A, Section 6 of the General Laws and as provided in this Bylaw.

SECTION 9.1 NON-CONFORMING LOTS

- 9.10 Notwithstanding the area and frontage requirements hereof, a detached one-family or two-family residential use or lawful building other than a dwelling may be constructed and used on a lot having less than the prescribed basic minimum area and/or minimum frontage, width, yard or depth requirements (provided that all other regulations of this Bylaw are complied with) if said lot, prior to the date of the adoption of the requirements in question was otherwise exempt from such requirements by the provisions of Chapter 40A, Section 6.
- 9.11 Such a non-conforming lot shall not be further reduced in area or frontage, and if it is subsequently combined with other land in such a way as to reduce or eliminate the non-conformity, it shall not again be subdivided except in accord with this Bylaw.

SECTION 9.2 NON-CONFORMING USES AND STRUCTURES

- 9.20 Any lawful building or structure, or use of a building, structure or land, existing at the time of adoption of this Bylaw or any amendment thereto which does not conform to the regulations thereof may be continued. However, except as hereinafter set forth, a non-conforming building or structure shall not be structurally altered, enlarged, nor reconstructed so as to increase its non-conformity under this bylaw. For the purpose of this section, a structural alteration shall be any change to the exterior of a building or other structure which involves alteration, relocation, enlargement, or reconstruction of walls or other significant elements of the building or structure.
- 9.200 Under Section 11.1, the Building Commissioner may permit the repair, alteration, reconstruction, extension or structural alteration of a lawful, dimensionally non-conforming single family or two family dwelling in any zoning district or a lawful, dimensionally non-conforming building in the B-G, B-L, B-VC, B-N or COM districts, or in either circumstance, a portion thereof, or accessory structures thereto, provided the proposed change does not constitute a change of use under this Bylaw, and at least one of the following conditions is met:
- 9.2000 In the case of a building non-conforming solely because of insufficient lot frontage or lot area, or both, the proposed change shall meet all dimensional requirements for front setback, side and rear yards, building coverage, lot coverage, maximum floors and maximum height.
- 9.2001 In the case of a dimensionally non-conforming building with sufficient lot frontage and lot area, where said building, or a portion thereof, is non-conforming as to one or more of the dimensional requirements for front setback, side and rear yards, building coverage, lot coverage, maximum floors or maximum height, all dimensional requirements met by the building prior to the proposed change shall be met after completion of the proposed change.

- 9.2002 In the case of a building non-conforming as to lot frontage and/or lot area, and non-conforming as to one or more of the dimensional requirements for front setback, side and rear yards, building coverage, lot coverage, maximum floors or maximum height, all dimensional requirements met by the building prior to the proposed change shall be met after completion of the proposed change.
- 9.201 Where a new or expanded existing non-conforming use is proposed in an existing lawful dimensionally non-conforming building, and no exterior alteration, reconstruction, extension or structural alteration will occur, the permit requirements of Section 3.3 shall apply but no additional Special Permit under Section 9.22 shall be required for the proposed use.
- 9.21 For the purposes of this section a non-conforming use which has been discontinued for twenty four (24) consecutive months shall not be re-established and any future use shall conform to the regulations of this Bylaw.
- 9.22 The Special Permit Granting Authority authorized to act under the provisions of Section 3.3 of this bylaw may, under a Special Permit, allow a non-conforming use of a building, structure or land to be changed to a specified use not substantially different in character or in its effect on the neighborhood or on property in the vicinity. Said Authority may also authorize, under a Special Permit, a non-conforming use of a building, structure, or land to be extended, or a non-conforming building to be structurally altered, enlarged or reconstructed; provided that the Authority finds that such alteration, enlargement, or reconstruction shall not be substantially more detrimental to the neighborhood than the existing non-conforming use or non-conforming building.
- 9.23 A building or structure devoted to a non-conforming use (whether in whole or in part) or a building or structure non-conforming as to setback, yards, coverage or height, may, if damaged or destroyed by fire or other accidental cause, be repaired or reconstructed within the same portion of the lot and used as before, provided that such repair or reconstruction is substantially completed within twenty four (24) months of the date of the damage or destruction.

SECTION 9.3 LOCATIONAL REQUIREMENTS IN MIXED USE CENTERS

9.30 Purpose

The purpose of this section is to establish regulations for the location of new additions or enlargements to non-conforming uses and structures, or the creation of separate buildings on the same lot as non-conforming uses and structures in the B-G, B-L, B-VC, B-N and COM Districts. These regulations are intended to promote sound design, enhance the creation of pedestrian-friendly streetscapes and spaces, and foster more functional and successful mixed use properties. Where the provisions of this section conflict with Section 9.1 and 9.2 of this Article, this section shall apply and prevail.

9.31 Non-conforming Structures

9.310 Enlargements, Repairs, or Alterations – Non-conforming structures may be permitted to be enlarged, extended, reconstructed, repaired or altered by the Permit Granting Board or Special Permit Granting Authority in conformance with the provisions of Section 9.2 provided, however, that any such enlargement, extension, reconstruction, repair or alteration shall conform to the locational regulations established herein.

9.311 Permitted Additions – Where a non-conforming structure is being expanded under Section 9.310, the addition shall abide by the following requirements:

9.3110 Front and Rear Additions – Any addition in front of an existing building shall be placed such that its front façade is set at or within the front setback area established by the minimum and maximum front setback. Rear additions may only be undertaken simultaneously with front or side additions, and only where the rear extension is not increasing the degree of existing nonconformity.

- 9.3111 Side Additions for Buildings Located Within the Front Setback Area – For an existing building located at the front setback, any side addition shall also be located at or within the front setback area.
- 9.3112 Side Additions for Buildings Located Outside of the Front Setback Area – For an existing building located at the rear edge or behind the front setback area, any side addition shall be extended forward such that its front façade is located at or within the front setback area.
- 9.312 Permitted New Buildings – The front facades of all separate new buildings being constructed on a site with an existing non-conforming structure shall be located at or within the front setback area.
- 9.313 Modification or Waiver – Any provision of this section may be modified or waived by the Special Permit Granting Authority authorized to act under the applicable section of this Bylaw for compelling reasons of safety, aesthetics, sustainable site design, or historic or environmental preservation needs which serve the purposes of this section.

SECTION 12 - NON-CONFORMING USES AND STRUCTURES

12.0 Continuation, Reconstruction, and Extension of Non-conforming Uses and Structures

- a. Any lawful use or structure that does not conform to this Bylaw may be continued, but no such non-conforming use or structure shall be changed, extended, or enlarged in any manner, except as provided in Subsections (e) and (f) below.
- b. If any non-conforming use of any structure is changed to a conforming or less restricted use, it shall not thereafter return to a nonconforming or more restricted use.
- c. Any non-conforming use of a structure or land which has been abandoned or not used for a period of twenty-four (24) consecutive months shall thereafter be used or developed only in accordance with this Bylaw.
- d. A non-conforming structure damaged or destroyed by fire, explosion, or any other catastrophe may be rebuilt provided such rebuilding, reconstruction, or restoration shall be undertaken within two (2) years of such catastrophe and the structure as rebuilt or restored shall not be in greater nonconformity with the provisions of this Bylaw. Such rebuilt, reconstructed, or restored structure may be enlarged in accordance with the provisions of Subsection (e) below.
- e. The Zoning Board of Appeals may authorize by Special Permit (pursuant to the procedures contained in Section 6, Chapter 40A, of the Massachusetts General Laws) any change, extension, or enlargement of a non-conforming structure or use or land, provided that the Zoning Board of Appeals finds that such change, extension, or enlargement shall not be substantially more detrimental to the neighborhood than the existing nonconforming use or structure.
- f. An existing non-conforming one-family or two-family dwelling or structures accessory thereto which is non-conforming with respect to a minimum setback, frontage, or lot size may be enlarged or extended by the issuance of a building permit, provided that such enlargement or extension shall comply with the minimum setback standards and lot coverage requirements of this Bylaw and that there shall be no change of use.

12.1 Non-conforming Lots

Lots shall be exempted from this bylaw to the extent and as provided in Section 6, Chapter 40A of the General Laws.

12.2 Non-conforming Signs

- a. Signs, which were illegal under any prior Bylaw and are illegal hereunder, shall be considered to be violations of this Bylaw.
- b. Signs which were legal when constructed but are prohibited by this Bylaw shall be allowed to continue as non-conforming structures.

HATFIELD

.4 NON-CONFORMING BUILDINGS AND USES

3.4.1 CONTINUATION OF USE

Any lawful building structure, or use of a building, structure or land or part thereof existing at the time of adoption of this By-Law, may be continued. However, a non-conforming building or structure shall not be structurally altered, enlarged, or reconstructed except as hereinafter set forth.

3.4.2 RE-ESTABLISHMENT OF NON-CONFORMING USES

- A. Any non-conforming building structure, or use of a building structure of land which has been discontinued for a period of two years shall not be re-established, and future use shall conform to the provisions of this By-Law except by special permit from the planning board. This regulation shall not apply to land for agriculture, horticulture, or floriculture, where such non-use of non-conforming uses of land, buildings, or structures shall have existed for a period of less than five years.
- B. Any building, structure, or use of land devoted to non-conforming use, or any building, structure, or use of land considered a non-conforming use at the time of adoption of this By-Law may, if damaged or destroyed by fire or other accidental cause, be reconstructed or restored with the same portion of the lot as used before, provided that such reconstruction or restoration is started within 24 months following damage or destruction.

3.4.3 ALTERATION OR EXTENSION

Pre-existing non-conforming structures or uses may be extended or altered when the Planning Board finds that such extension, alteration, or change is not substantially more detrimental to the neighborhood than the existing non-conforming use.

3.4.4 ACCESSORY APARTMENTS

A. Purpose

The purpose of the accessory apartment bylaw is to:

- a. Provide older homeowners with a means of obtaining, through tenants in accessory apartments, rental income, companionship, security, and services, and thereby to enable them to stay more comfortably in homes and neighborhoods they might otherwise be forced to leave;
- b. Add inexpensive rental units to the housing stock to meet the needs of smaller households, both young and old;
- c. Make housing units available to low and moderate-income households who might otherwise have difficulty finding homes within the town;
- d. Protect stability, property values, and the residential character of a neighborhood by ensuring that accessory apartments are installed only in owner-occupied houses and under such additional conditions as may be appropriate to further the purposes of this bylaw; and
- e. Legalize conversions to encourage compliance with the State Building Code.

B. Definitions

Accessory Apartment: A self-contained housing unit incorporated within or accessory to a single family dwelling complete with its own sleeping, cooking, and sanitary facilities and a separate means of egress.

Building, Attached: A building having any portion of one or more walls in common with an adjacent building.

Dwelling, Single-Family: A building designed or used exclusively as a residence and including only one dwelling unit.

Primary Residence: A building in which is conducted the principal use of the lot on which it is located. For residentially zoned lots, such a building would be a dwelling.

C. Accessory Apartment Standards

Accessory Apartments that are contained within the existing structure of the primary dwelling unit shall be allowed by-right in all districts. The Special Permit Granting Authority may authorize a Special Permit for accessory apartments that are attached to the existing primary dwelling unit, but that require structural modifications and/or an expansion to the primary dwelling unit in all districts.

An Accessory Apartment in owner-occupied, single-family dwelling, will be allowed by-right or by Special Permit provided that the following standards and criteria are met:

- a. The apartment will be a complete, separate housekeeping unit that functions as a separate unit from the original unit.
- b. Only one apartment will be created on a single-family lot.
- c. When expansion of the principle structure is required to accommodate the accessory apartment, the principle structure and addition must comply with set back and maximum lot coverage requirements for its district.
- d. The owner(s) of the residence in which the accessory apartment is located shall occupy at least one of the dwelling units on the premises.
- e. The accessory apartment shall be designed so that the appearance of the building remains that of a one-family residence as much as feasibly possible. In general, any new entrances shall be located on the side or rear of the building. Any exterior changes made must conform with the single-family character of the neighborhood.
- f. An addition to the original building is permitted provided that the addition does not increase the floor area or volume of the original building by more than half (50%) of the existing total residential space (excluding unfinished attic and basement, garage, porch, and patio).
- g. The accessory apartment shall be clearly a subordinate part of the single-family dwelling. It shall be no greater than (100%) of the existing total residential space or nine hundred (900) square feet, whichever is less.
- h. The accessory apartment shall have no more than 2 bedrooms.
- i. In accordance with Section 5.7 of the Town's zoning bylaw, at least two (2) off-street parking spaces per dwelling unit and one (1) space for guests are available for use by the owner-occupant(s) and tenant(s). Parking spaces shall be located to the side or the rear of the structure, to the maximum extent feasible. Applicant may apply for a waiver from full compliance with Section 5.7 which may be granted at the determination of the Board.
- j. For dwellings to be served by on-site septic system, the owner must obtain a Disposal Works Construction Permit from the Board of Health before a special permit can be obtained. This is to ensure that the existing sewage disposal system is adequate for the proposed accessory apartment.
- k. The construction of any accessory apartment must be in conformity with the State Building Code requirements.

D. Application Procedure

- a. The procedure for the submission and approval of a Special Permit for an Accessory Apartment shall be the same as prescribed in the Section 5.3 of the Town's zoning bylaw except it shall include a notarized letter of application from the owner(s) stating that he/she will occupy one of the dwelling units on the premises. A non-refundable fee shall be included with the application for an accessory apartment to cover the cost of processing the application and code inspections. The applicant shall also be responsible for the cost of legal notices. As part of the public hearing process, parties of interest, as defined in M.G.L. Chapter 40A, Sec. 11 must be notified.
- b. Upon receiving a Special Permit or Building Inspector approval, the owner(s) must file on subject property a Declaration of Covenants at the County Registry of Deeds. The Declaration shall state that the right to rent a temporary accessory apartment ceases upon transfer of title. A time-stamped copy of the recorded Declaration shall be provided to the Planning Board.
- c. In order to provide for the development of housing units for disabled and handicapped individuals, the Planning Board will allow reasonable deviation from the stated conditions where necessary to install features that facilitate access and mobility for disabled persons.

E. Transfer of Ownership of a Dwelling with an Accessory Apartment

- a. The temporary Special Permit for an Accessory Apartment shall terminate upon the sale of property or transfer of title of the dwelling, unless the Planning Board has approved a transfer of the Special Permit to the new owner.
- b. The new owner(s) must apply for transfer of a Special Permit for an Accessory Apartment and shall submit a notarized letter of application stating that he/they will occupy one of the dwelling units on the premises and a written request to the Planning Board stating that conditions at the time of the original application remain unchanged. Minor changes may be approved without a hearing.

c. Upon receiving the transferred special permit, the new owner(s) must file on subject property a Declaration of Covenants at the County Registry of Deeds. The Declaration shall state that the right to rent a temporary accessory apartment ceases upon transfer of title. A time-stamped copy of the recorded Declaration shall be provided to the Planning Board.

F. Accessory Apartments in Existence Before the Adoption of an Accessory Apartment Bylaw

a. Statement of Intent

To ensure that Accessory Apartments or conversions built within the 10 years prior to the adoption of this Accessory Apartment Bylaw are in compliance with health and safety requirements included in the State Building Code.

b. Application Procedure

The Planning Board may authorize, under a Special Permit and in conjunction with the Building Inspector, a use known as an Accessory Apartment. The board will review each existing Accessory Apartment constructed after July 1, 2009 on a case-by-case basis to determine if the dwelling conforms to State Building Code Regulations. Owners of properties with an Accessory Apartment that are not compliant with State Building Code must provide plans for bringing the Accessory Apartment up to code and must apply for a special permit in order to continue the use as an Accessory Apartment.

The applicant must follow the same procedure described in this Section including the submission of a notarized letter declaring owner occupancy and a Declaration of Covenants.

c. Pre-existing, non-conforming Accessory Apartments

Accessory Apartments that were constructed prior to July 1, 2009 may continue to operate as a pre-existing, non-conforming use and are subject to the requirements under Section 3.4 (Non-Conforming Buildings and Uses).

G. Conflict with Other Laws

The provisions of this bylaw shall be considered supplemental of existing zoning bylaws. To the extent that a conflict exists between this bylaw and others, the more restrictive bylaw, or provisions therein, shall apply.

H. Severability

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the town's zoning bylaw.

3.5 HAZARDOUS WASTE

A. (Text disapproved and deleted by the Attorney General – 8/28/03)

B. Hazardous waste disposal is prohibited within the Town limits of Hatfield. Hazardous wastes definitions and their disposal are defined by the U.S. Environmental Protection Agency under 40 CFR Part 250 and the Hazardous Waste Management Act, Massachusetts General Laws Chapter 21.

4.0 DIMENSIONAL AND DENSITY REGULATIONS

4.1 BASIC REQUIREMENTS

Buildings and structures erected, reconstructed, or enlarged in any zoning district shall conform to the dimensional and density regulations set forth in the table in Section 4.3.

4.2 SPECIAL CONDITIONS

A. Minimum front yard dimensions required in the dimensional table shall be measured from the street line where a plan of such street or way is on file or plotted with the planning board, or in the absence of such plan or plot, from a line 25 feet from and parallel with the center of such street way.

B. On 'through lots' the front yard dimensional requirements shall apply to each of the yards of the abutting streets.

C. On 'corner lots', where the included angle is less than 135 degrees, either street may be considered as the frontage street, but not both together.

- D. Limitations on height of buildings and structures in the dimensional table shall not apply to chimneys, towers, ventilators, spires, antennas, and ornamental features.
- E. A previously plotted lot or parcel of land containing less than the area of frontage required by the dimensional table may be developed for single residential use in accordance with the provisions of chapter 40A. G.L.
- F. Residential storage sheds, to a maximum size of 12' X 16' (or 192 sq. ft.), and a maximum door size of 6'- 0" wide by 6' -8" high, shall be exempt from the side and rear yard set back requirements set forth in the table in Section 4.3, except that the minimum side and rear yard set back for residential storage sheds shall be 15' from the side property line and 15' from the rear property line in all residential use zones. Such storage shed shall explicitly not be used as a garage for motor vehicles as defined in Mass. General Laws, Chapter 90.

Nesthampton

3.21 Additional Dimensional and Density Regulations

- a. No building shall be erected within twenty (20) feet of an abutter's property line and all building lots shall consist of a minimum frontage of two hundred and fifty (250) contiguous feet on a public way. On a corner lot, total frontage must be on a single public way.
- b. The height of any building or structure measured from the highest point of any roof or parapet to the average finished grade on the street side of the structure shall not exceed thirty-five (35) feet. This limitation shall not apply to spires, domes, chimneys, antennae, cupolas, television and radio towers, belfries, monuments, tanks, water and fire towers, windmills, silos, ski lift towers, nor to farm buildings, churches, municipal and institutional buildings.
- c. No topography, vegetation, signs, walls or fences which interfere with traffic visibility at any point within thirty-five (35) feet of the intersection of 2 or more streets or roadways will be allowed. All signs must conform to the sign regulations in Section 5.4.
- d. No building shall be erected within 50 feet of any public way.

3.3 NON-CONFORMING USES

The lawful use of any structure or land existing at the time of the enactment or amendment of this bylaw may be continued even though such structure or use does not conform with the provisions of the bylaw. This use or structure is, however, subject to the following conditions:

3.30 Discontinuance

A non-conforming use which has not been used for a period of twenty-four (24) months shall not be reestablished and any further use shall conform with this bylaw.

3.31 Changes

A non-conforming use shall not be changed to any other non-conforming use, and once changed to a more restrictive or conforming use, shall not be permitted to revert to its previous use.

3.32 Alteration or Extension

Pre-existing non-conforming structures or uses may be extended or altered by Special Permit or Variance (see Section 6.2 or 6.4) when the Zoning Board of Appeals finds that such extension, alteration or change is not substantially more detrimental to the neighborhood than the existing non-conforming use. Refer to Zoning Board of Appeals policy as to non-conforming use.

3.33 Reconstruction

A non-conforming structure which has been damaged or destroyed by fire, flood, hurricane or other accidental cause, may be repaired or reconstructed and used as before,

provided such restoration is begun within one year and does not exceed the size of the original non-conforming structure unless enlargement is allowed by the Zoning Board of Appeals as outlined above.

3.34 New Ownership

A non-conforming use may be continued by a new owner, subject to the provisions of this section.

3.4 CONDITIONS OF CONSTRUCTION

The following shall apply to all new construction, repair, alteration or moving taking place in the Town of Westhampton:

1. All permits for new residence construction shall be granted only upon provision of acceptable sanitary systems of sewage disposal and provision of a proven tested potable water supply.
2. No person shall construct, alter, move, or substantially repair any building or structure without having first obtained a permit for the same.
3. The Inspector of Buildings, as appointed by the Board of Selectmen, shall be solely responsible for the issuance or withholding of a building or occupancy permit in accordance with the provisions of this bylaw.
4. The application for a building permit shall be accompanied by three (3) copies of a site plan drawn to scale which clearly show boundaries of the lot, location of the street, any required culvert, placement of building or buildings, location of sewerage system and water supply, and, if required, a sketch of the structure showing the location of smoke detectors.
5. A copy of the site plan shall be forwarded, by the applicant, to the superintendent of highways for review. Said superintendent shall make recommendations as he deems appropriate and shall send a copy thereof to the building inspector within three (3) working days of receipt of said plan.
6. A copy of the sketch of the building, showing location of the smoke detectors, if required, shall be forwarded, by the applicant, to the chief of the fire department for review. Said fire chief shall make recommendations as he deems appropriate and shall send a copy thereof to the building inspector within three (3) working days of receipt of said plan.

HADLEY

§ 5.1. Nonconforming uses.

- 5.1.1. The lawful use of any structure or land existing at the time of the enactment or subsequent amendment of this bylaw may be continued although such structure or use does not conform to provisions of the bylaw.
- 5.1.2. Alteration. A nonconforming structure may not be altered or reconstructed if the cost of such alteration or reconstruction exceeds the assessed value of the structure at the time of the change, except as provided in § 5.1.7.
- 5.1.3. Extensions. No increase in the extent of the nonconforming use of a structure or land may be made, except as provided herein under § 5.1.7.
- 5.1.4. Restoration. No nonconforming structure damaged by fire or other causes to the extent of more than 75% shall be repaired or rebuilt except in conformity with the bylaws.
- 5.1.5. Nonuse. A nonconforming use which has not been used for a period of two years or more shall not be reestablished and any future use shall be in conformity with this bylaw. **[Amended 5-5-2011 ATM by Art. 18]**
- 5.1.6. Changes. Once changed to a conforming use, no structure or land shall be permitted to revert to a nonconforming use.
- 5.1.7. Regulations of nonconforming uses or structures. Notwithstanding any language in this bylaw to the contrary, preexisting nonconforming structures or uses may be extended, altered or changed, provided that no such extension, change or alteration shall be permitted unless the Board of Appeals makes a finding that such change, extension or alteration is not substantially more detrimental than the existing nonconforming use to the neighborhood.
- 5.1.8. Construction or operations under a building or special permit shall conform to any subsequent amendment of the bylaw unless the use or construction is commenced within a period of not more than six months after the issuance of the permit and, in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable. **[Added 5-22-2006]**

SECTION XI. NONCONFORMING USES, STRUCTURES AND LOTS**11.0 Nonconformity by Initial Enactment or Amendment**

The provisions of this section affecting nonconforming uses, structures and/or lots cited herein and certain related nonconformities shall apply under the provisions of this Ordinance and established districts as enacted initially or as subsequently amended.

11.1 Extension, Alteration and Change**11.11 Pre-existing Nonconforming Uses**

- a. Pre-existing nonconforming uses may be altered, extended or changed by a special permit issued by the Zoning Board of Appeals (ZBA) in accordance with this ordinance. The ZBA may issue such special permit after a public hearing and the extension, alteration or change shall be permitted if the ZBA finds that such extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.
- b. Any conforming use of a nonconforming structure may be extended throughout the existing structure.

11.12 Pre-Existing Nonconforming Single-Family or Two-Family Residential Structures

(Sec. 11.12 amended by the City Council on 10-17-2012; approved by the Mayor 10-18-2012)

- a. Nonconforming single and two-family residential structures may be extended, altered, or structurally changed upon a determination by the Building Commissioner that the proposed changes comply with all required setback, yard, building coverage, and building height requirements. If the Building Commissioner finds that such proposed changes do not conform to all current applicable zoning ordinances, a review of the application shall be required by the Zoning Board of Appeals (ZBA).
- b. If the ZBA finds that the proposed changes would not significantly intensify any existing non-conformities or create any new non-conformities, and that the proposed changes would not cause the structure to become substantially more detrimental than the existing non-conforming structure to the neighborhood, it shall grant a special permit for the proposed changes.
- c. If the ZBA finds that any proposed change would create any new non-conformities a variance will be required for such changes.

11.13 Pre-Existing Non-Conforming Non-Residential Structures

- a. A pre-existing nonconforming non-residential structure may not be expanded, altered or changed except by a special permit from the ZBA.
- b. A special permit will be granted if the ZBA finds:
 - (1) That the proposed alteration, extension or change complies with the zoning ordinance standards or has received a variance for such proposed alteration, extension or change from the ZBA;
 - (2) That the proposed alteration, extension or change will not be substantially more detrimental to the neighborhood than the existing nonconforming structure(s).

11.14 Pre-Existing Nonconforming Uses, Structures or Lots Changed to Conformity

- a. Any nonconforming structure or portion thereof or any nonconforming use which has come into conformity shall not be altered, extended, or changed so as to again become nonconforming.
- b. Any nonconforming lot which has come into conformity shall not again be changed to a nonconforming lot.

11.2 Restoration

Any non-conforming structure damaged by fire or other cause in excess of fifty (50) percent of its value may be repaired or rebuilt if otherwise in accordance with this ordinance, and used for its original use or a nonconforming use. If such action does not occur within six (6) months the repair or rebuilt structure shall not be used except for a conforming use.

11.3 Abandonment and Non-Use

Any nonconforming use structure, and/or lot which has been abandoned within the meaning of this ordinance or not used for a continuing period of two (2) years or more shall not be used again, unless such use, structure, and/or lot complies with the provisions of this ordinance.

11.4 Moving

Any nonconforming structure shall not be moved to any other location on the lot or any other lot unless every portion of such structure, the use thereof, and the lot shall be conforming.

11.5 Unsafe Structure

Any structure determined to be unsafe may be restored to a safe condition, provided such work on any nonconforming structure shall not place it in greater nonconformity, and provided further, if the cost to restore any structure shall exceed fifty (50) percent of its physical replacement value, it shall be reconstructed only as a conforming structure and used only for a conforming use.

5-03-2018

11.6 Single Lot Exemption for Single-Family and Two-Family Uses

Residential Lot of Record - Any increase in area, frontage, width, yard, or depth requirements of this ordinance shall not apply to a lot for single- and two-family residential use, if at the time of recording or endorsement of such lot, whichever occurs sooner, the following conditions were met:

11.61 The lot was not held in common ownership with any adjoining land.

11.62 The lot conformed to the applicable zoning requirements at the time it was recorded or endorsed.

11.63 The lot had at least five thousand (5,000) square feet of area and fifty (50) feet of frontage.

(Bylaw of 5-31-79)

