

City of Northampton, MA  
Friday, January 31, 2020

## Chapter 350. Zoning

### § 350-9.1. Nonconformity by initial enactment or amendment.

The provisions of this section apply to actions in connection with nonconforming uses, structures, and lots as created by the initial enactment of this chapter or by any subsequent amendment thereto. The above sentence shall not apply to landscaping, sidewalks, and parking requirements within any commercial district. Any change of site within such district that triggers site plan approval or entails a change of use requires that the site come into compliance with the ordinance with respect to parking lot layout, landscape screens, plantings, buffers and curb cuts, unless it is impossible to meet these standards. In all cases, there shall be some landscape buffer between the public right-of-way and off-street parking lots.

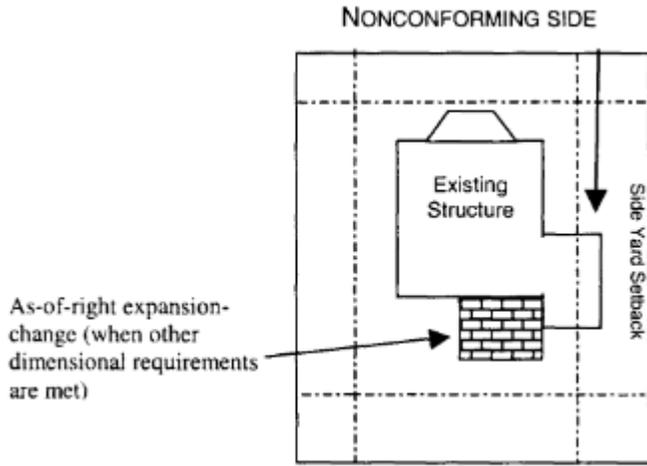
### § 350-9.2. Extension and alteration.

- A. This Zoning Ordinance shall not apply to structures or uses lawfully in existence or lawfully begun, or to a valid building or special permit issued before the first publication of notice of the public hearing on this chapter or to any other exemptions in accordance with MGL c. 40A, § 6. The ordinance shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure, and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent. Notwithstanding the above, nothing in this section shall be construed to allow a change of a nonconforming use to a new, nonconforming medical or retail marijuana use.
- B. A finding, as used in this chapter, requires that the Zoning Board of Appeals determine that a change, expansion or alteration to a preexisting nonconformity will not be substantially more detrimental to the neighborhood than the existing nonconforming nature of the structure, lot and or use. The Zoning Board may impose conditions as part of approving a finding.
- C. Applications for findings, as allowed in this chapter, shall follow the same procedural requirements as special permit applications; however, a finding shall be granted upon the vote of a simple majority of the Zoning Board of Appeals.

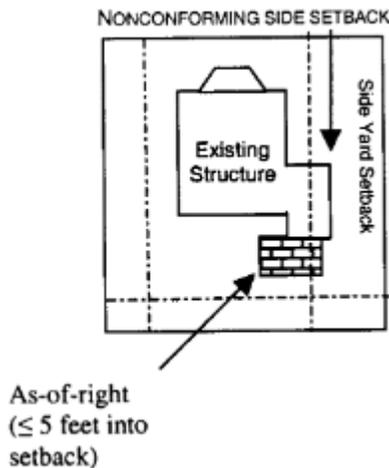
### § 350-9.3. Change, extension or alteration of legally preexisting nonconforming structures, uses, or lots.

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.

- A. A preexisting nonconforming structure or use may be changed, extended or altered:
  - (1) As-of-right if the expansion/change itself meets all the dimensional and use requirements of the current zoning.



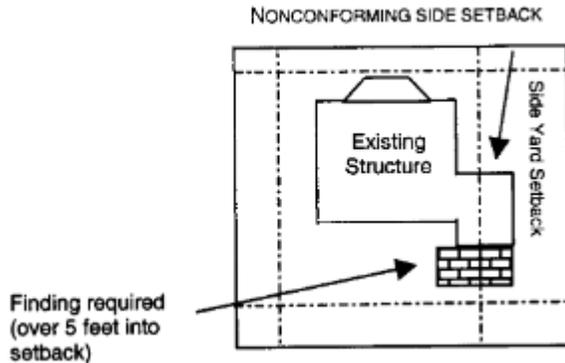
- (2) As-of-right in a residential district, when said change is from a preexisting nonconforming use to a conforming residential use, and there are no changes to the exterior of the structure or lot and no new nonconformities are created by such change/conversion.
- (3) As-of-right when said change or alteration is limited to rebuilding a single- or two-family home destroyed by fire or other natural disaster within two years of the disaster. Reconstruction must either meet the current zoning requirements or fall within the same footprint and height of the destroyed home so as not to expand the nonconforming nature of said home.
- (4) As-of-right when said change or alteration is limited to rebuilding any other building not more than 50% destroyed by fire or other natural disaster when the change is limited to rebuilding or replacing the structure within the preexisting footprint and height of the existing structure or within an area and height that conforms to all dimensional requirements and all construction occurs within two years of the disaster.
- (5) As-of-right, if the expansion (vertical or horizontal) is for a residential use and does not extend either further than five feet into a required setback or further than the existing nonconforming structure, whichever is less and such extension does not create any new zoning violation (such as further reducing a setback or open space).



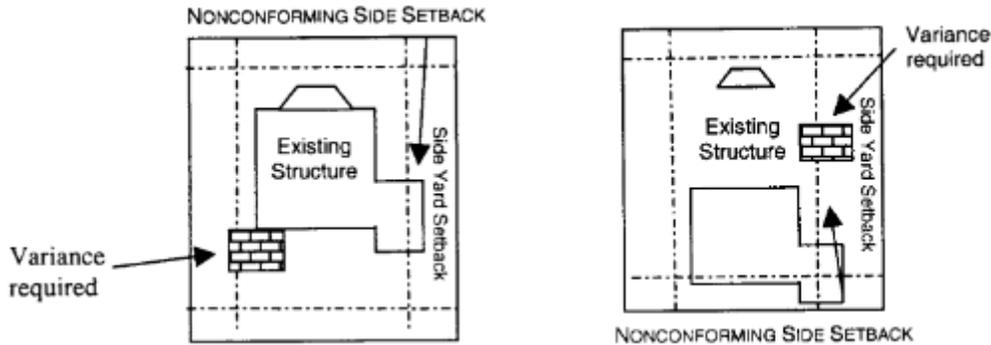
- (6) As-of-right, if the expansion (vertical or horizontal) is for a residential use and does not extend either further into a required setback than the existing nonconforming structure, and such extension does not create any new zoning violation (such as further reducing a setback or open space), and the applicant provides written evidence satisfactory to the Building

Commissioner that all owners of all parcels within 300 feet of the subject property have no objection to the expansion.

- (7) With a finding from the Zoning Board of Appeals so long as the change does not involve a sign (see § 350-7 for signs) and § 350-9.3A(5) above does not apply and when the expansion extends (vertically or horizontally), but does not increase the nonconforming nature of the property and does not create any new zoning violation (such as further reducing a setback or minimizing open space).



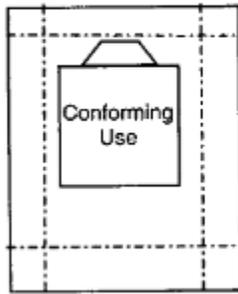
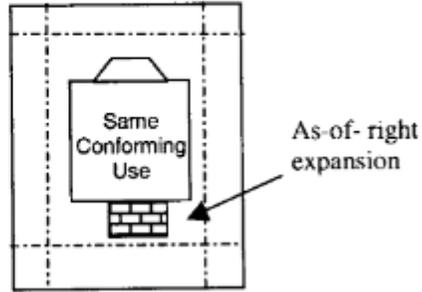
- (8) With a finding, in accordance with § 350-9.2, for a proposed change of use.
- (9) With a variance, for any use except for a single- or two-family, when said change, extension or alteration will create any new violation of the present zoning requirements or if change is an expansion of preexisting nonconforming retail use.



- (10) With a special permit for a single- or two-family home when the Zoning Board makes a finding that the change which includes new zoning violations (such as reduction of open space, new setback encroachments or further encroachments into the setback, etc.) will not be substantially more detrimental to the neighborhood than the existing nonconforming single- or two-family structure.
- (11) With a combination of a finding and variance when applicable.

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 conforming use in a conforming structure, which meets all the dimensional, and density provisions of the current zoning, except for lot size, frontage, or depth and when the lot size, frontage, and depth requirements do not change.

CONFORMING STRUCTURE AND  
USE ON NON CONFORMING LOTEXPANSION OF CONFORMING STRUCTURE  
AND USE ON NON CONFORMING LOT

(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).

(3) With a variance to a conforming use which requires a larger minimum lot area, minimum lot width or frontage or minimum lot depth than is required for the present use or creates any other new zoning violation.

(4) With a combination of a finding and variance when applicable.

C. A preexisting nonconforming lot may be changed, extended or altered:

(1) As-of-right if such change, extension or alteration to the lot does not increase the nonconforming nature of the property, only brings the lot into total conformance with the zoning requirements in existence at the time of said change, extension or alteration, or adds to the lot.

(2) As-of-right whenever a group of adjoining lots in common ownership is separated or the ownership of one or more lots changed, if each of the lots will conform to all provisions of this chapter, or if the lots are residential lots and each lot contained a principal residential structure at the time the adjoining lots came under common ownership and no changes were made to the structures or lots during the time in which the lots were commonly owned, in a way that increased the nonconforming nature of these lots.

## § 350-9.4. Single-lot exemption for single- and two-family use.

Any increase in area, frontage, width, yard or depth requirements of this chapter shall not apply to a vacant lot for single- and two-family residential use, which:

- A. Has at least 5,000 square feet of area and 50 feet of frontage; and
- B. Is in an area zoned for single- or two-family use (A special permit must be obtained if one is required.); and
- C. Conformed to existing zoning requirements when the lot was legally created, if any; and
- D. Is in separate ownership prior to the City Council vote which made the lot nonconforming, and has maintained its separate identity.

## § 350-9.5. Abandonment and discontinuance.

Any nonconforming use of a conforming structure and/or lot which has been abandoned or discontinued for a continuous period of two years or more shall be deemed extinguished and shall not be reestablished. For purposes of this section, the abandonment period shall not be considered broken by temporary occupancy, except when such temporary occupancy is for a period of 60 or more consecutive days and when said temporary occupancy involves the exercise of nonconforming use.