

## **ARTICLE IV- GENERAL USE REGULATIONS**

### **Section 4-10 NON-CONFORMING LOTS, BUILDINGS, STRUCTURES AND USES**

#### **4-10.1 - Continuation.**

*Legally non-conforming uses, buildings, structures or conditions may be continued in their current or a substantially similar manner.*

#### **4-10.2 - Abandonment.**

*Any non-conforming use of land, buildings or structures abandoned for a period of 2 years or more shall not thereafter be re-established, except for:*

- 1. Uses which would otherwise be allowed in the zoning district but for lot or building non-conformities, as consistent with 4-10.3(1),*
- 2. Abandonment as a result of a catastrophe or involuntary action, provided active and continuing bona fide efforts to re-establish the use have commenced prior to the 2 years,*
- 3. Single or two family uses re-established in existing vacant dwelling structures,*
- 4. Agriculture, horticulture, or floriculture uses, and*
- 5. Re-establishment of an abandoned non-conforming or substantially similar use after such period provided the Board of Appeals has issued a special permit under 4-10.3(3) and such special permit application has been made within 5 years of the abandonment.*

#### **4-10.3 - Changes.**

*Non-conforming lots, buildings, structures, or uses may be extended, altered or reconstructed in accordance with this section, provided that whenever a non-conforming use has been changed to a conforming use, it shall not thereafter be changed to a non-conforming use.*

- 1. Any building or structure, including the use thereof, which violates the current side, rear or front yard requirements, height, or lot dimensional, area, coverage or parking requirements shall be permitted to expand, be restored, be re-occupied or in all other ways be considered and treated as a conforming use or structure as long as such changes do not further violate, expand, increase or intensify any existing non-conformity nor create a new non-conformity.*
- 2. Non-conforming lots may likewise be altered or expanded, provided any change in a lot's area or frontage/width which increases or intensifies either of those non-conformities is deemed substantially more detrimental and therefore requires relief by means of a variance or other provisions of this ordinance.*
- 3. Except as specified below, any other changes, including an extension or alteration intensifying, increasing or re-establishing any existing non-conformity, or a change to a non-conforming use which is not substantially similar, shall require a sole finding from the Board of Appeals that such alteration will not be substantially more detrimental than the existing non-conforming use, structure or condition. Such finding shall be sought as a Special Permit, unless the matter concerns a use exempted under MGL c.40A s.3. (4/8/25)*
- 4. The following changes shall be permitted as of right by the Superintendent of Buildings, provided the alteration does not involve a sign and will comply with all other requirements of the ordinance, thus not resulting in any new non-conformity:*
  - a. In the case of structure having a floor area of less than 2,500 square feet, or of any single or two family dwelling structure, where changes will not result in encroachment further into any non-conforming setback, nor a lateral extension of such setback beyond the greater of 6 feet or 25% of its existing length, nor an expansion of any non-conformity by 25% or more of the portion that is in non-conformance, nor any expansion of building height within a non-conforming setback area:*

- i. *Its alteration or expansion for the same or a substantially similar use or for an allowed use;*
  - ii. *Its demolition, in whole or in substantial part, and reconstruction for a substantially similar or allowed use, provided such reconstruction results in less than a 25% increase in gross floor area and is commenced within 2 years of demolition or legal condemnation, whichever is earlier, and thereafter proceeds to completion within 1 year. The Board of Appeals may grant an extension of time for good cause.*
- b. *Expansion of a non-conforming use, or conversion to a substantially similar use, by less than 25%. Such expansion may be determined by an increase in floor area devoted to the use, duration of operation, number of employees, tenants or vehicle trips generated. Uses which are non-conforming by reason of their lacking a requisite special permit may be expanded in accordance with 1-50.8.*
  - c. *The addition of one accessory dwelling unit shall be allowed, notwithstanding any existing non-conforming condition, if developed upon a lot having an existing principal dwelling and located in a district where a single family dwelling is an allowed use. This protected use allowance shall not exempt any dimensional, site plan approval, or other applicable reasonable regulation, as additional relief through the foregoing or other provisions of this ordinance may also be required unless the matter concerns the alteration of an existing non-conformity that results in a condition otherwise in conformance with 760 CMR 71.00. (4/8/25)*

*The Superintendent of Buildings may properly withhold approval and require a Special Permit if an adequate survey or documentation necessary to establish the pre-existing conditions being relied upon is not provided.*

*Nothing herein shall be construed to allow for the creation of a new non-conformity without benefit of a variance.*

*Where an extension of a non-conformity has been afforded by this section, it shall not thereafter be further extended, except with the aforementioned Special Permit.*

#### **4-10.4 - Residential Lot Protections.**

*Any vacant lot not meeting current area and frontage/ width requirements may be built upon for any currently allowed single or two family dwelling purpose if such lot:*

1. *Conformed to the dimensional requirements for a building lot and the subject use at the time it was created,*
2. *Contains at least 50' frontage and 5,000 square feet of area, and*
3. *Has been maintained and mapped as a separate parcel in City Assessors records since April 20, 2021, provided*
4. *For a lot of less than 10,000 square feet in area and/or with less than 75' of frontage: a special permit from the Board of Appeals is obtained if either:*
  - a. *the lot previously contained a dwelling structure and has been vacant for at least 2 years (causing otherwise vested rights to lapse), or*
  - b. *the lot is or has been commonly owned with any adjoining land where such contiguousness to vacant land is otherwise relied upon to lessen or cure or a non-conformity (otherwise causing the parcels to be considered merged as one lot for zoning purposes)*
5. *For any such lot which is adjacent to another non-conforming lot under common ownership or control, any single-family residential structure constructed on said lot shall not exceed 1,850 square feet of heated living area, shall contain not less than 3 bedrooms and shall not be used as a seasonal home or short-term rental. (4/8/25)*

#### **4-10.5 - Special Provisions.**

*The following are deemed to enjoy the protections afforded by this Section:*

1. *Any building or structure in existence, if erected or altered in a non-conforming manner (legally or otherwise) 10 or more years previously, and*
2. *Any non-conformity created or intensified as the result of a governmental taking, with same exempted from 4-10.3(2). (7/13/21)*