

# PROPOSED NONCONFORMING USES AND STRUCTURES BYLAW

To see if the Town will vote to amend the Town of West Newbury Zoning Bylaw by striking existing Section 7 (including 7.1.-7.4) and replacing it with the following new Section 7 (including 7.1-7.9), and further to authorize the Town Clerk to make any non-substantive, ministerial changes to numbering and formatting to ensure consistency with the remainder of the Zoning By-law, or take any action relative thereto:

## EXISTING:

### Section 7 ~~NON-CONFORMING USES AND STRUCTURES.~~

~~7.1. Any lawful building or use of a premise existing at the time of the passage of this by-law, or any building or use commenced, within six months of the date of issuance of a building or special permit issued by the Planning Board or Board of Appeals in accordance with the provisions of this by-law before the first publication of notice of the public hearing on conformity with the provisions of this by-law or an amendment thereto, may be continued, rebuilt if damaged or destroyed, and, if authorized by the Board of Appeals, may be enlarged or changed to a specific use, provided, however, that the Board of Appeals shall not grant such approval unless it shall find that such expansion or change shall not be substantially more detrimental to the neighborhood than the existing non-conforming use or structures. Existing structures that do not meet the setbacks may be expanded or extended along the existing non-conforming building set back line without Board of Appeals approval if said expansion or extension does not encroach upon another setback or create another dimensional non-conformity.~~

~~7.2. If a non-conforming use is discontinued or is abandoned for a period of more than two (2) years, it shall not be re-established, and any future use shall be in conformance with this by-law.~~

~~7.3. Increased requirements respecting lot area, frontage, width, yard depth and similar dimensions provided in this by-law or amendments thereto shall be subject to the exemptions provided in Section 6, Chapter 40A, G.L., and shall not apply to a lot for single or two-family use which, at the time of recording or endorsement, whichever occurs sooner, was not held in common ownership with adjoining land, conformed to the then existing requirements, and had less than the increased requirement but at least five thousand (5,000) square feet of area and fifty (50) feet of frontage.~~

~~7.4. Any construction or use for which a building permit was lawfully issued prior to the first publication of notice of the public hearing respecting this by-law or any amendment thereto shall be permitted, notwithstanding non-compliance with the requirements of this by-law or amendments thereto provided such use or construction was commenced within six (6) months after the issuance of the permit and in cases involving construction completion as continuously and expeditiously as is reasonable.~~

## PROPOSED

### Section 7. Nonconforming Uses and Structures

#### 7.1 Nonconforming single- and two-family residential structures

**7.1.1. Nonconforming single- and two-family residential structures may be reconstructed, extended, altered, or structurally changed upon a determination by the Building Inspector that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure. Any one or more of the following circumstances**

shall not be deemed to increase the nonconforming nature of said structure:

a. Alteration, reconstruction, extension or change to a structure located on a lot with insufficient lot area, which structure as altered, reconstructed, extended or changed will comply with all current setback, lot coverage, and building height requirements.

b. Alteration, reconstruction, extension or change to a structure located on a lot with insufficient frontage, which structure as altered, reconstructed, extended or changed will comply with all current setback, lot coverage, and building height requirements.

c. Alteration, reconstruction, extension or change to a structure which encroaches upon one or more required yard or setback areas, where the alteration, reconstruction, extension or change will comply with all current setback, lot coverage and building height requirements.

d. Alteration, reconstruction, extension or change to an existing structure that does not meet the required setbacks for purposes of or extending along the existing nonconforming building setback line if said expansion or extension does not encroach upon another setback or create any new dimensional nonconformity.

7.1.2. In the event that the Building Inspector determines that the nonconforming nature of any single- or two-family structure would be increased by the proposed reconstruction, extension, alteration, or change, the Board of Appeals may grant a Finding to 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.

## 7.2 Nonconforming structures other than single- and two-family residential structures

7.2.1. The Board of Appeals may grant a Finding 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.

## 7.3 Variance required

7.3.1. Except as provided in 7.1 above, the reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a new nonconformity, shall require the issuance of a variance from the Board of Appeals.

## 7.4 Nonconforming uses

7.4.1. The Board of Appeals grant a Finding to change or extend a nonconforming use, including to another nonconforming use, in accordance with this article only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

## 7.5 Abandonment or non-use

7.5.1. 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 bylaw.

## 7.6 Reconstruction after catastrophe or demolition

7.6.1. A nonconforming structure may be reconstructed after a catastrophe or after demolition in accordance with the following provisions:

- a. Reconstruction of said premises shall commence within two years after such catastrophe or demolition.
- b. Building(s) as reconstructed shall be located on the same footprint as the original nonconforming structure, shall be only as great in floor area as the original nonconforming structure.
- c. In the event that the proposed reconstruction would 1) cause the structure to exceed the floor area of the original nonconforming structure; 2) exceed applicable requirements for yards, setback, and/or height; or 3) cause the structure to be located other than on the original footprint, the provisions of Section 7 shall apply.

## 7.7 Reversion to nonconformity

7.7.1. No nonconforming use or structure shall, if changed to a conforming use or structure, revert to a nonconforming use- or structure.

## 7.8 Lawfully existing uses and structures

7.8.1. This bylaw 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 on such bylaw, or amendments thereto, as required by MGL c. 40A, § 5. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder.

## 7.9 Commencement of Use or Construction

Construction or operations under a building or special permit shall conform to any subsequent amendment of the ordinance or by-law unless the use or construction is commenced within a period of not more than 12 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.