

## Article VI: General Provisions

### § 139-33 Preexisting nonconforming uses, structures and lots.

- A. This section shall apply to uses, structures, and lots that were either in existence prior to the adoption of the Zoning Bylaw or lawfully allowed or permitted at some point in time after the adoption of the Zoning Bylaw and no longer meet minimum zoning requirements or are now prohibited. Further, a use of land and/or lots and construction of structures shall be exempt from this chapter provided that a building or special permit was issued before the first publication of notice of the public hearing to change zoning as it may apply, pursuant to MGL c. 40A, § 5, as may be amended from time to time.

[Amended 5-5-1992 ATM by Art. 36, AG approval 8-3-1992; 5-4-1993 ATM by Art. 47, AG approval 5-24-1993; 4-8-1996 ATM by Art. 40, AG approval 7-15-1996; 4-14-1997 ATM by Art. 46, AG approval 8-5-1997; 4-30-2003 ATM by Art. 52, AG approval 8-27-2003; 4-6-2011 ATM by Art. 64, AG approval 9-15-2011; 3-31-2012 ATM by Art. 56, AG approval 7-12-2012; 4-5-2014 ATM by Art. 64, AG approval 5-7-2014]

- (1) Preexisting, nonconforming structures or uses may be extended, altered, or changed, provided that:

- (a) The special permit granting authority finds that such extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure and/or use to the neighborhood. Where an existing structure violates a front, rear, or side yard setback distance, the special permit granting authority may issue a special permit to allow an extension, alteration, or change to the structure, provided that the nonconforming setback distance is not made more nonconforming and based upon a finding that the extension will not be substantially more detrimental to the neighborhood than the existing nonconformity; or
- (b) The Zoning Administrator or the special permit granting authority finds that the alteration, extension, or change to a structure does not increase its nonconforming nature and does not create any new nonconformities. Where an existing structure violates a front, rear, or side yard setback distance, the Zoning Administrator may issue a permit allowing an extension, alteration, or change to the structure, provided that the nonconforming setback distance is not made more nonconforming and no new nonconformities are created; or
- (c) A Zoning Enforcement Officer determines through a review of the building permit application that the extension, alteration, or change to the nonconforming structure is compliant with all dimensional requirements of this chapter.

- (2) An extension, alteration, or change to an existing structure or a new structure that will result in an increase in the pre-existing nonconforming ground cover ratio of a lot may be allowed through the issuance of a special permit, provided that the special permit granting authority makes the following findings:

[Amended 4-6-2015 ATM by Art. 64, AG approval 8-5-2015]

- (a) The increase in ground cover ratio will not be substantially more detrimental to the neighborhood than the existing nonconformity;
  - (b) The resulting ground cover ratio is consistent with the character of the surrounding neighborhood; and
  - (c) The extension, alteration, or change to the existing structure or the new structure is conforming to other dimensional requirements of this chapter.
- (3) Preexisting, nonconforming lots may be increased in area or frontage through the addition of adjoining property without the need for any relief under this bylaw. Any other alteration to a preexisting, nonconforming lot that does not increase an existing or create a new nonconformity is allowed upon determination by the Zoning Administrator that such alteration will not be substantially more detrimental to the neighborhood. Lots created pursuant to MGL c. 41, § 81P, based upon the exception in the clause of MGL c. 41, § 81L for lots containing two or more structures that predate the adoption of subdivision control in the Town, shall have the same status as preexisting, nonconforming lots, and any structures thereon, which predate the adoption of subdivision control in the Town, shall have the status of preexisting nonconforming structures. The removal of structures to facilitate an alteration or change to an existing structure, the relocation of the structure upon the lot, or the construction of a new structure, shall not cause the lot to be merged with an abutting lot in common ownership, provided that the lot remains vacant for less than one year.

[Amended 4-6-2015 ATM by Art. 64, AG approval 8-5-2015; 4-2-2016 ATM by Art. 60, AG approval 7-12-2016]

- (4) Removal and reconstruction of any or all of the preexisting nonconforming structure(s), or any portion(s) thereof, in excess of the permitted ground cover ratio upon a lot, shall be allowed by special permit, provided that:

[Amended 4-6-2015 ATM by Art. 64, AG approval 8-5-2015]

- (a) Such special permit shall have been issued prior to the removal of the preexisting nonconforming structure(s), or any portion(s) thereof;
- (b) (Reserved)
- (c) All reconstructed structure(s), or portion(s) thereof, shall conform to all applicable front, rear and side yard setback requirements; unless relief is granted under separate provisions of this chapter; and
- (d) The special permit granting authority shall have made the finding that the result of the proposed removal and reconstruction shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure and/or use.

- B. Constructions or operations under a building permit, a site plan review, or a special permit shall conform to any subsequent amendment of this chapter:

[Amended 4-14-1997 ATM by Art. 49, AG approval 8-5-1997]

- (1) Unless the use or construction is commenced within a period of not more than six months after the issuance of the permit; and
- (2) In cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

- C. Nonconforming uses and structures abandoned or not used for a period of three years shall not be reestablished.

- (1) Any future use or structure shall conform with the requirements of this chapter.

- D. Once changed to a conforming use, no structure or use shall be permitted to revert to a nonconforming use; provided, however, that:

- (1) An accessory building which is accessory to a residential use and has no commercial use may be razed and reconstructed with substantially the same configuration, ground cover, siting and use.

- E. Any increase in area, frontage, width, yard or depth requirements shall not prohibit an unimproved lot, which at the time of recording or endorsement of such lot, whichever occurred sooner, or at any time thereafter, was not held in common ownership with any adjoining land and conformed to then-existing Zoning Bylaw requirements, from being built upon for a conforming use or for single- and two-family purposes as provided by MGL c. 40A, § 6, as may be amended from time to time.

[Amended 5-5-1992 ATM by Art. 36, AG approval 8-3-1992; 4-12-1999 ATM by Art. 51, AG approval 8-10-1999; 4-6-2011 ATM by Art. 64, AG approval 9-15-2011; 3-31-2012 ATM by Art. 56, AG approved 7-12-2012; 4-5-2014 ATM by Art. 65, AG approval 5-7-2014]

In addition, any increase in area, frontage, width, yard or depth requirements shall not prohibit an unimproved lot from being built upon, provided that at the time of such amendment, the lot had the benefit of a zoning protection period pursuant to MGL c. 40A, § 6 (5th par.), was dimensionally compliant pursuant to such protection, and was conveyed into separate ownership from adjoining land prior to the end of such zoning protection, and remained in separate ownership and control at all times since the expiration of such protection, and now has less than the present requirements of area or frontage and has a frontage of not less than 20 feet or the benefit of an appurtenant easement providing a means of access for vehicles and utilities to and from a public street, which access, in the opinion of the Planning Board, has sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed construction and for the installation of municipal services to serve the land in question and the buildings erected and to be erected thereon.

- (1) For a lot within the provisions of this § ~~139-33~~E, the maximum ground cover upon such lot shall be:

- (a) In the case of a lot containing less than 5,000 square feet, 30% of the area of the lot or the amount determined in accordance with the maximum ground cover ratio requirement for the zoning district in which the lot is situated, whichever is greater; or

- (b) In the case of a lot containing at least 5,000 square feet, 1,500 square feet of ground cover or the amount determined in accordance with the maximum ground cover ratio requirement for the zoning district in which the lot is situated, whichever is greater. In the LUG-2 and LUG-3 Districts only, a lot containing at least 40,000 square feet shall be permitted 2,000 square feet of ground cover or the amount determined in accordance with the maximum ground cover ratio requirement for the zoning district in which the lot is situated, whichever is greater; and

[Amended 4-2-2016 ATM by Art. 60, AG approval 7-12-2016]

- (2) For a lot within the provisions of this § 139-33E, the dimensional requirements of § 139-16A shall apply, except as follows:

- (a) In the LUG-2 and LUG-3 Zoning Districts, the side and rear yard setbacks shall be 10 feet; and

- (b) In the MMD Zoning District, the side and rear yard setbacks shall be 25 feet; and

F. (Reserved)<sup>[1]</sup>

[1] *Editor's Note: Former Subsection F, which provided for a time limit on the applicability of increases in area, frontage, width, yard or depth requirements, was repealed 4-6-2011 ATM by Art. 64, AG approval 9-15-2011.*

G. (Reserved)<sup>[2]</sup>

[2] *Editor's Note: Former Subsection G, Approval-required plans, as amended 5-7-1991 ATM by Art. 33, AG approval 9-6-1991, was repealed 4-6-2011 ATM by Art. 64, AG approval 9-15-2011.*

H. (Reserved)<sup>[3]</sup>

[3] *Editor's Note: Former Subsection H, Approval-not-required ("ANR") plans, was repealed 4-6-2011 ATM by Art. 64, AG approval 9-15-2011.*

I. (Reserved)<sup>[4]</sup>

[4] *Editor's Note: Former Subsection I, which included provisions on the effect of disapproval of a plan, was repealed 4-6-2011 ATM by Art. 64, AG approval 9-15-2011.*

J. (Reserved)<sup>[5]</sup>

[5] *Editor's Note: Former Subsection J, which included provisions on lots subject to a matter of any appeal or any litigation, was repealed 4-6-2011 ATM by Art. 64, AG approval 9-15-2011.*

K. (Reserved)<sup>[6]</sup>

[6] *Editor's Note: Former Subsection K, which included provisions on the waiver by the record owner of the land of certain provisions so that the provisions of the current Zoning Bylaw apply to the property, was repealed 4-6-2011 ATM by Art. 64, AG approval 9-15-2011.*

- L. If as a result of acquisition of property by the Commonwealth or any instrumentality thereof, including the Town of Nantucket, the County of Nantucket, the Nantucket Islands Land Bank (whether such acquisition is by eminent domain, gift, or deed for a public purpose for which property could be taken by eminent domain), a use, building, structure, lot, parking space, loading bay, landscaping or any other feature or attribute of property, no longer complies with this chapter, then, provided that such property and its use complied with this chapter or was legally nonconforming under this chapter prior to such acquisition, the portion, features, attributes and uses of the property remaining after such public acquisition shall be deemed to be legally nonconforming under this chapter.

[Added 4-10-1995 ATM by Art. 41, AG approval 5-22-1995]

- M. Disaster rebuild. Pre-existing non-conforming structures, damaged or destroyed by accidental cause, including fire, or otherwise damaged or destroyed without the consent of the owner, may be repaired or reconstructed, provided that:

[Added 4-8-2008 ATM by Art. 54, AG approval 8-18-2008]

- (1) The non-conforming nature of the repaired or reconstructed structure is not increased in any respect;

- (2) The repaired or reconstructed structure shall be used in the same manner as the structure being replaced or otherwise used in compliance with the use limitations of the applicable zoning district; and

- (3) A building permit for the repair or reconstruction shall be issued within two years from the date of the damage or destruction; time incurred in resolving an appeal or other court action necessary for issuance of a building permit shall

not be counted as part of the two-year limit. The Zoning Board of Appeals may extend the two-year period for good cause, provided that a request has been filed prior to expiration of the time period outlined above.

### **§ 139-34 Amendments.**

[Amended 4-6-2011 ATM by Art. 64, AG approval 9-15-2011]

This chapter may be amended pursuant to MGL c. 39, § 10, and MGL c. 40A, § 5.

### **§ 139-35 Severability.**

The provisions of this chapter are hereby declared to be severable and, if any provision or the application of such provision to any property, person or circumstance shall be determined to be invalid, such invalidity shall not be construed to affect the validity of any other provision hereof or the application of any provisions to any other property, person or circumstances. The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof.

### **§ 139-36 When effective.**

The effective date of the adoption or amendment of this chapter shall be the date on which such adoption or amendment was voted upon by Town Meeting. If such adoption or amendment is subsequently disapproved, in whole or in part, by the Attorney General, the Zoning Bylaw as it would have read without the disapproved portion of the adoption or amendment so voted, shall be deemed to have continued in effect from the date of such vote.