

Sec. 7.8. Nonconformities

7.8.1. Applicability

A. In General.

1. Except as provided specifically below, this Chapter, as amended, shall not affect any building or special permit issued or apply to buildings, structures or uses lawfully in existence or lawfully begun prior to the first publication of notice of the public hearing on such ordinance required by M.G.L. Chapter 40A, Section 5, nor to the use of land to the extent that it was used at the time of adoption of the same or of any corresponding provision of any prior ordinance. Provided that, construction work under such a permit must be commenced within 6 months after it is issued and the work, whether under such permit or otherwise lawfully begun is continued through to completion as continuously and expeditiously as it is reasonable.
2. Notwithstanding paragraph 1., all land use applications for site plan approval or special permits which were filed with the City Clerk on or before April 29, 1987 and which were approved subsequent to that date shall be subject to the provisions of the Newton Zoning Ordinance, in effect on April 29, 1987.

B. Specifically. This Chapter, as amended, shall apply to the following cases:

1. Any building or structure or the use of any building, structure or land existing in violation of the ordinances in force at the time this Chapter or any corresponding provision of any prior ordinance was adopted;
2. Any nonconforming building or structure not used for a period of 2 years or any nonconforming use abandoned for a period of 2 years; and
3. Any nonconforming use which is changed to a conforming use. No reversion to a nonconforming use shall be permitted thereafter.

C. Increases in Area, Frontage or Setback Requirements in Residential Districts.

1. **In General.** Any increase in area, frontage, or setback requirements prescribed in Sec. 3.1 or Sec. 3.2 shall apply to any lot in a residential district except to the extent that either the

provisions of M.G.L. Chapter 40A, Section 6, as in effect on January 1, 2001, or the following provisions, provide otherwise.

2. Exceptions. Any increase in area, frontage, or setback requirements prescribed in Sec. 3.1 or Sec. 3.2 shall not apply to any lot in a residential district if all of the following requirements are met:

- a. At the time of recording or endorsement, whichever occurred sooner, or on October 11, 1940 if the recording or endorsement occurred before October 11, 1940, the lot:
 - i. Conformed to the requirements in effect at the time of recording or endorsement, whichever occurred sooner, but did not conform to the increased requirements; and
 - ii. Had at least 5,000 square feet of area; and
 - iii. Had at least 50 feet of frontage.
- b. The size or shape of the lot has not changed since the lot was created unless such change complied with the provisions of Sec. 7.8.4
- c. Either:
 - i. The lot was not held in common ownership at any time after January 1, 1995 with an adjoining lot or lots that had continuous frontage on the same street with the lot in question; or
 - ii. If the lot was held in common ownership at any time after January 1, 1995 with an adjoining lot or lots that had continuous frontage on the same street with the lot in question, such lot had on it a single- or two-family dwelling; or
 - iii. If the lot:
 - a. Did not have on it a single- or two-family dwelling as of July 7, 2001; and
 - b. Was held in common ownership at any time after January 1, 1995 with an adjoining lot that had continuous frontage on the same street and the adjoining lot was the site of a single- or two-family dwelling; and

- c. Has on it a single- or two-family dwelling that was constructed in compliance with a building permit and received a certificate of occupancy on or before December 22, 2011.

(Rev. Ords. 1973; Ord. No. 284, 06/19/78; Ord. No. 303, 11/20/78; Ord. No. S-275, 02/05/87; Ord. No. T-115, 11/19/90; Ord. No. W-49, 07/09/01; Ord. No. A-24, 06/03/13)

7.8.2. Nonconforming Buildings, Structures, or Uses

A. Special Permit Not Required.

1. A special permit is not required from the City Council for nonconforming buildings or structures in the following cases:
 - a. Alteration, reconstruction, extension or structural change to a single- or two-family residential structure which does not increase the nonconforming nature of the structure, and no such increase shall be deemed to have occurred solely because the lot area or the lot frontage, or both, are nonconforming, and no such increase shall be deemed to have occurred solely because the lot area per unit is nonconforming unless the number of units increases;
 - b. Alteration, reconstruction, structural change, but not an extension or enlargement of a nonconforming building or structure for a use permitted as of right, in a Business, Mixed Use, Manufacturing or Limited Manufacturing district;
 - c. Additional outdoor sidewalk seats permitted under Revised Ordinances Chapter 12, Section 12-70 shall not be considered an increase in the nonconformity nor constitute an extension of use of a lawful nonconforming restaurant in any district; and
 - d. Alteration, reconstruction, extension or structural change to a nonconforming non-residential building or structure, which does not increase the nonconforming dimensional nature of said building or structure, for conversion of the building or structure to a use permitted as of right in any residential district.

- e. A special permit is not required from the City Council for change in use to a use permitted as of right, in a Business, Mixed Use, Manufacturing or Limited Manufacturing district.

B. De Minimis Relief.

1. Regardless of whether there are increases in the nonconforming nature of a structure, the City Council deems that the following changes to lawfully nonconforming structures are *de minimis* and that these changes are not substantially more detrimental to the neighborhood pursuant to M.G.L. Chapter 40A, Section 6. The following alterations, enlargements, reconstruction or extensions to a lawful nonconforming building or structure used for residential purposes may be allowed in accordance with the procedures set forth below; provided that:
 - a. Relief is limited to that portion or portions of the building or structure which is presently dimensionally nonconforming;
 - b. The resulting changes on the nonconforming side will be no closer than 5 feet to the side or rear property line;
 - c. The resulting distance to the nearest residence at the side where the proposed construction will take place is equal to or greater than the sum of the required setbacks of the 2 adjacent lots;
 - d. The resulting construction will meet all building and fire safety codes; and
 - e. The *de minimis* relief provided in this paragraph shall not apply to buildings in which the nonconformity is due solely to FAR requirements, nor shall it be used to increase the FAR beyond that shown in Sec. 3.1.
2. In accordance with Sec. 7.8.2.B.1, the following *de minimus* alterations are allowed:
 - a. Dormers that do not extend above the height of the existing roof peak and do not add more than 400 square feet of floor area;
 - b. Decks or deck additions or porches less than 200 square feet in size;

- c. First floor additions in the side and rear setbacks which do not total more than 200 square feet in size;
- d. Second floor additions which do not total more than 400 square feet in size;
- e. Enclosing an existing porch of any size;
- f. Bay windows in the side and rear setbacks which are cantilevered and do not have foundations;
- g. Bay windows which protrude no more than 3 feet into the front setback and are no less than 5 feet from the alteration to the lot line;
- h. Alterations to the front of the structure if within the existing footprint; and
- i. Alterations and additions to the front of a structure of not more than 75 square feet in size, so long as the alteration, addition, reconstruction or extension does not encroach any farther into the front setback.

C. Special Permit Required.

- 1. A special permit from the City Council shall be required for any alteration, reconstruction, extension or structural change of such building or structure to provide for its use in a substantially different manner or greater extent than the existing use, except as provided above in paragraph A. above.
- 2. A nonconforming building or structure may be structurally or substantially altered or reconstructed or may be altered or enlarged to permit the extension of a nonconforming use, and a nonconforming use may be extended in an existing building or structure or enlargement thereof, or may be introduced into a new building as a part of a nonconforming establishment existing on December 27, 1922, and a nonconforming use may be changed to another nonconforming use; provided that a special permit is obtained. In granting such a permit, the City Council shall make a finding that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood and shall impose such conditions as may be necessary to protect the neighborhood from injury. As used in this Paragraph, the

word “establishment” shall include buildings, structures and lands.

D. Standards.

1. Nonconforming Buildings or Structures.

Whenever nonconforming buildings or structures do not require a special permit, all otherwise applicable regulatory provisions of this Chapter, as amended, specifically including but not limited to Sec. 5.1 shall apply.

2. Minimum Dimensions. Whenever the operation of this Sec. 7.8.2 would reduce the area available for building a dwelling house upon any lot in a residence district to less than 20 feet in its shortest dimension, or less than 800 square feet in total area, the requirements of this Sec. 7.8.2 shall be modified so far as necessary to provide such minimum dimension and total area by reducing the minimum distance of such dwelling house from rear lot and street lines, first from rear lot lines, but to not less than 7½ feet, and second, if necessary, from street lines, but to not less than 15 feet.

3. Replacing 3-Story Residential Structures.

Any residential structure that is replacing a previously existing 3-story residential structure shall be allowed 3 stories, but only insofar as the absolute height does not exceed that of the previously existing structure.

(Rev. Ords. 1973; Ord. No. 284, 06/19/78; Ord. No. S-260, 08/03/87; Ord. No. T-115, 11/19/90; Ord. No. T-313, 12/6/93; Ord. No. T-314, 12/6/93; Ord. No. V-113, 04/23/97; Ord. No. W-51, 07/09/01; Ord. No. X-39, 12/02/02; Ord. No. Z-51, 08/10/09; Ord. No. Z-77, 02/22/11; Ord. No. A-13, 03/18/13; Ord. No. A-99, 01/17/17)

7.8.3. Substandard Commercial Lots

- A. **Defined.** Lots which on August 3, 1987 were undeveloped and which prior to that date were in single and separate ownership and were not available for use in common or in connection with a contiguous or adjacent lot and which have a lot area less than 10,000 square feet. For the purpose of this provision, lots must have been shown as separate parcels on plans filed in the Assessor's Office and assessed as such prior to August 3, 1987 or they must have been shown or described in the most recent plans or deeds duly recorded with the Registry of Deeds for the Southern District of Middlesex County prior to August 3, 1987.
- B. **Height.** The as-of-right building height shall be 1 story or 12 feet. By special permit, the building height may be 2 stories or 24 feet.
- C. **Floor Area Ratio.** As of right FAR shall be 0.50 and by special permit the maximum FAR may be 0.75.
- D. **Uses in Business 1, 2, 3 and 4 Districts.** For substandard commercial lots, the only uses permitted are:
 - 1. Office;
 - 2. Bank, excluding drive-in facilities;
 - 3. Barbershop, beauty parlor, tailor, shoe repair shop or similar service establishment;
 - 4. Dwelling units above the first floor;
 - 5. Accessory parking facilities; and
 - 6. Other uses similar or accessory to those authorized by paragraph D. above.
- E. **Uses in Business 2 District.** For substandard commercial lots, the following uses are permitted in addition to those in paragraph A, above:
 - 1. Wholesale business or storage warehouse, provided that no outside storage is permitted; and
 - 2. Other uses similar or accessory to those authorized in paragraph D. above.
- F. **Uses in Manufacturing Districts.** For substandard commercial lots, the only uses which are permitted are:
 - 1. Research and development facility, laboratory or research facility;

- 2. Office;
- 3. Storage warehouse;
- 4. Wholesale business, excluding the on-site collection or storage for wholesale sale of trash or yard waste of any sort, including but not limited to recyclable materials, brush, leaves, grass clippings and any other similar materials;
- 5. Accessory parking facilities; provided that they are limited to a single level; and
- 6. Other uses similar or accessory to those authorized by paragraph F. above, provided that the following or similar uses shall not be permitted in connection with nor shall they be considered valid accessory uses to the uses authorized by paragraph F. above: collection, storage, transfer-haul or composting of trash or yard waste of any sort, including, but not limited to recyclable materials, brush, leaves, grass clippings and any other similar materials.

- G. **Uses in Mixed Use Districts.** For substandard commercial lots, the only uses which are permitted are:
 - 1. Office;
 - 2. Research and development facility;
 - 3. Bank, excluding drive-in facilities;
 - 4. Barbershop, beauty parlor, tailor, shoe repair shop, or similar service establishment;
 - 5. Dwelling units above the first floor;
 - 6. Accessory parking facilities; and
 - 7. Uses similar or accessory to those authorized by this section.

(Ord. No. T-75, 03/05/90; Ord. No. W-33, 03/05/01)

7.8.4. Alteration, etc., of Structure When Shape or Size of Lot is Changed

- A. **In General.** Except to the extent that this Sec. 7.8.4. Provides otherwise, whenever a lot upon which stands a building or structure erected after the passage of this Chapter, or of any corresponding provision of any prior ordinance, is changed in size or shape so that the lot, building or structure no longer complies with the provisions of this Chapter, such building or structure shall not be used until it is

altered, reconstructed or relocated so as to comply with the provisions of the underlying zoning district.

- B. **Defined.** For purposes of this Sec. 7.8.4, the size or shape of a lot shall be deemed to have been changed only if the lot was combined, merged, subdivided, or resubdivided by recording a deed, plan, or certificate of title in the Registry of Deeds for the Southern District of Middlesex County or the Land Court Registry of Deeds for the Southern District of Middlesex County. The date of such change shall be the date of recording.
- C. **Exempt Lots.** For purposes of implementing this Sec. 7.8.4, no lot, building or structure shall be deemed in noncompliance with the provisions of this Chapter if the lot was changed in size or shape:
 - 1. Solely as a result of a taking of a portion of the lot for a public purpose; or
 - 2. As a result of a conveyance of a portion of the lot by the owner thereof to the City of Newton, any other body politic, or any agency or department thereof, in lieu of such a taking; or
 - 3. In compliance with the requirements of the remainder of this Sec. 7.8.4.
- D. The provisions of this Sec. 7.8.4 shall not apply to a lot in any residential district, or a building or a structure located on the lot, if the lot changed in size or shape at any time on or after October 11, 1940, if the change was in accordance with all of the following requirements:
 - 1. At the time such lot changed in size or shape:
 - a. Either:
 - i. If the lots were changed before December 7, 1953, all of the lots met the requirements of Section 7.8.4.D.3.; or
 - ii. If the lots were changed on or after December 7, 1953, either:
 - a. The number of resulting lots did not exceed the number of lots that had existed immediately prior to the change, and all of the resulting lots met the requirements of Sec. 7.8.4.D.3.; or
 - b. The number of resulting lots exceeded the number of lots that had existed immediately prior to the change, and

all the lots, and all of the buildings and structures on the lots, conformed to the requirements in Sec. 3.1 or Sec. 3.2 for lots created after December 7, 1953, in the zoning district in question;

- b. And no other lot, and no building or structure on any lot, was rendered nonconforming, or more nonconforming, by reason of the change in size or shape of such lot.
- 2. For purposes of implementing this Sec. 7.8.4, a lot, or a building or structure on a lot, shall be deemed “rendered nonconforming, or more nonconforming” if the lot was changed in size or shape in a manner not in conformity with the provisions of this Sec. 7.8.4.
- 3. Except as provided in the paragraphs below, following the change in lot size or shape or both, the resulting lot area, lot frontage, lot area per unit, lot coverage, and usable open space of the lot, and the resulting height, number of stories, and front, side, and rear setbacks, of the buildings and structures on the lot, met any of the following requirements:
 - a. The lot area, lot frontage, lot area per unit, and usable open space, and the front, side, and rear setbacks all were either unchanged or increased, and the lot coverage, height, and number of stories were either unchanged or decreased; or
 - b. If there was a decrease of lot area, lot frontage, lot area per unit, or usable open space, or front, side, or rear setback, or if there was an increase of lot coverage, height, or number of stories, the change resulted in conformity with the following requirements:
 - i. If the lot in question was created before December 7, 1953, the requirements shall be those prescribed in Sec. 3.1 or Sec. 3.2 for lots created before December 7, 1953, in the zoning district in which the lot was located at the time the change in lot size or shape or both occurred; or
 - ii. If the lot in question was created after December 7, 1953, the requirements shall be those prescribed in Sec. 3.1 or Sec. 3.2 for lots created after December

7, 1953, in the zoning district in which the lot was located at the time the change in lot size or shape or both occurred.

4. If more than 50 percent of a single- or two-family dwelling is demolished, and if the size or shape of the lot was changed at any time after January 1, 1995, the requirements for lot area, lot frontage, lot area per unit, usable open space, lot coverage, floor area ratio, height, number of stories and front, side, and rear setback distances that shall apply to any subsequent addition, construction, reconstruction, alteration, or structural change shall be the requirements prescribed in Sec. 3.1 or Sec. 3.2 for lots created after December 7, 1953, in the zoning district in which the lot was located at the time when the lot was changed.
5. In any multi-residence district, if a single-family dwelling is converted to a two-family dwelling, and if the size or shape of the lot was changed at any time after January 1, 1995, the two-family dwelling shall always be subject to the requirements for lot area, lot frontage, lot area per unit, usable open space, lot coverage, floor area ratio, height, number of stories and front, side, and rear setback distances prescribed in Sec. 3.1 or Sec. 3.2 for lots created after December 7, 1953, in the zoning district in which the lot was located at the time when the lot was changed.
6. If, before a change in size or shape of 2 or more lots, a lot, regardless of when the lot was created, had lot area and lot frontage that was equal to or greater than the minimum required for a lot created after December 7, 1953, in the zoning district in which the lot was located, the requirements for lot area and lot frontage that shall apply to any subsequent change in the size or shape of the lot shall be the requirements prescribed in Sec. 3.1 or Sec. 3.2 for lots created after December 7, 1953, in the zoning district in which the lot was located at the time when the lot was changed.
7. If, following the change in size or shape of 2 or more lots, any 1 or more of the resulting lots has lot area or lot frontage or both that is equal to or greater than twice the minimum required for a lot created after December 7, 1953, in the zoning district in which such lot was located at the time when the lot was changed, the requirements for

lot area, lot frontage, lot area per unit, usable open space, lot coverage, floor area ratio, height, number of stories and front, side, and rear setback distances that shall apply to every lot whose size or shape was changed shall be the requirements prescribed in Sec. 3.1 or Sec. 3.2 for lots created after December 7, 1953, in the zoning district in which the lot was located at the time when the lot was changed.

- E. The City Council may grant a special permit to allow the area of a lot in a residential district to be reduced by up to 5 percent of the applicable lot area required in Sec. 3.1 or Sec. 3.2, but only if the grant of such a special permit:
 1. Does not result in the creation of any nonconformity that did not previously exist with respect to frontage, lot area per unit, front setback, side setback, rear setback, height, number of stories, lot coverage percentage, or usable open space percentage; and
 2. Is consistent with and not in derogation of the size, scale, and design of other lots, buildings and structures in the neighborhood.
- F. The City Council may grant a special permit to allow the frontage of a lot in a residential zoning district to be reduced by up to 5 percent of the applicable lot area required in Sec. 3.1 or Sec. 3.2, but only if the grant of such a special permit:
 1. Does not result in the creation of any nonconformity that did not previously exist with respect to lot area, lot area per unit, front setback, side setback, rear setback, height, number of stories, lot coverage percentage, or usable open space percentage; and
 2. Is consistent with and not in derogation of the size, scale, and design of other lots, buildings and structures in the neighborhood.

(Rev. Ords. 1973 §24-28; Ord. No. W-50, 07/09/01)