



NONCONFORMITIES

Zoning Amendment - Garages

Zoning and Planning Committee

11/23/2020

Definition - Nonconforming

- ▶ Uses and structures may be nonconforming
- ▶ The use or structure must have lawfully begun or lawfully existed prior to the zoning change
- ▶ “Lawfulness” means that the use or structure complied with zoning laws at the time the use first commenced or the structure was first constructed

Protections for Nonconformities

- ▶ Massachusetts General Laws Chapter 40A, Sec. 6, provides a baseline level of protection for nonconformities
 - ▶ A lawful nonconforming use or structure does not need to comply with requirements of a zoning change
 - ▶ A lawful nonconforming use automatically acquires the protections
- ▶ Single and two family residential structures
 - ▶ Additional protections - State law allows as of right the alteration, reconstruction, extension or structural change of such a structure, so long as the extended or altered structure does not increase its nonconforming nature

Proposed Alteration or Addition

- ▶ If there is a proposed alteration or addition to a nonconforming structure, the City would identify the nature of the nonconformity and make an initial determination as to whether the proposed alteration or addition would intensify the existing nonconformity or result in additional ones
 - ▶ If the answer is “no”, the applicant may proceed in compliance with the current Zoning Ordinance
 - ▶ If the answer is “yes”, the applicant must obtain a “Section 6 finding” or seek a variance

Section 6 Finding

- ▶ A proposed extension or alteration of a nonconforming structure that would intensify the existing nonconformity may be permitted by the Permit Granting Authority of a municipality
- ▶ The PGA must find that the proposed change, extension or alteration is not substantially more detrimental to the neighborhood than is the existing nonconforming use or structure
- ▶ An alteration that would create a new nonconformity may not be permitted by a Section 6 finding

Variance

- ▶ If a Section 6 Finding is not granted, the current Zoning applies to the proposed alteration and the applicant must seek a variance
- ▶ To create an additional or new nonconformity, an applicant must seek a variance



Newton - Current Zoning Nonconformities - Section 7.8

- ▶ The City's current zoning ordinance explicitly provides the floor protection to nonconforming uses and structures required by state law
- ▶ The current zoning ordinance also permits Section 6 findings and designates the Special Permit Granting Authority as the body to make such findings
 - ▶ 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...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.