

14 NONCONFORMANCE

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2ND DISCUSSION DRAFT

14.1 NONCONFORMITIES

1. General

- a. The adoption and occasional amendment of the Somerville Zoning Ordinance and Official Zoning Atlas, including the adoption of the City's first zoning ordinance, can cause previously lawfully conforming lots, structures, uses, site characteristics, and signs to become nonconforming to new regulations.
- b. This section explains the impact of this nonconforming status on development.

2. Determination of Status

- a. A lot, structure, use, site characteristic, or sign that existed prior to the establishment of zoning in Somerville or that complied with the Somerville Zoning Ordinance when platted, built, or established and remains in compliance with subsequent amendments to the Somerville Zoning Ordinance is lawfully conforming.
- b. A lot, structure, use, site characteristic, or sign that existed prior to the establishment of zoning in Somerville or that complied with the Somerville Zoning Ordinance when platted, built, or established but has become non-compliant to a subsequent amendment of the Somerville Zoning Ordinance is a preexisting nonconformity.
- c. The burden of proving that a lot, structure, use, site characteristic, or sign is a preexisting nonconformity rests entirely with the property owner.
- d. Applicants applying for development review required by this section may be required to submit evidence of a prior permit or other documentation showing that the lot, structure, use, site characteristic, or sign was legally platted, built, or established prior to the effective date of this Ordinance, or any amendment to this Ordinance.
- e. The Building Official shall determine whether reliable evidence of nonconforming status has been provided by the property owner.

3. Basic Rights

- a. Preexisting nonconforming lots, structures, or uses may continue in the same form and use so long as the nonconformity remains otherwise compliant with this Ordinance.
- b. Status as a preexisting nonconformity runs with the lot, structure, use, site characteristic, or sign and is not affected by changes in tenancy, ownership, or management.

4. Nonconforming Lots

- a. Description
 - i. A nonconforming lot is a lot that was lawfully

platted but that no longer complies with applicable standards because of the adoption or amendment of the Somerville Zoning Ordinance.

- b. Buildable Lots
 - i. Any vacant lot with dimensions smaller than required for any permitted building type in a zoning district is unbuildable.
- c. Parcelization
 - i. A lot split, lot merger, or lot line adjustment, or subdivision that would result in a new nonconformity is prohibited.

5. Nonconforming Structures

- a. Description
 - i. A nonconforming structure is a principal building type or accessory structure, other than a sign, that was lawfully built but that no longer complies with applicable standards because of the adoption or amendment of the Somerville Zoning Ordinance.
- b. Ordinary Repair and Maintenance
 - i. Normal maintenance of a nonconforming structure including, but not limited to painting, roof replacement, re-siding, window replacement, and other improvements that are deemed to be cosmetic or de minimus in nature by the Building Official, are permitted.
- c. Principal Building Types
 - i. Any modification to a preexisting building type that is not permitted in a zoning district is prohibited, except as follows:
 - a). Any building component, building frontage, or amenity space allowed for any building type permitted within the same district may be added by Special Permit; and
 - b). Structures used for religious or educational activities per M.G.L. Chapter 40A, Section 3 may be modified by Special Permit.
 - ii. The MODIFICATION of a permitted building type that is nonconforming to any standard for that specific building type is subject to the following:
 - a). The creation of any new nonconformity is prohibited.
 - b). Any increase in an existing nonconformity is prohibited.
 - c). The addition of a building component, building frontage, or amenity space is permitted as indicated elsewhere in this Ordinance.
 - d). Any modification that results in greater compliance to this Ordinance is permitted.
- d. Accessory Structures
 - i. Any modification that increases an existing nonconformity or creates a new nonconformity is prohibited.
 - ii. Any modification that results in greater

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- conformance to this Ordinance is permitted.
- e. Special Permits
 - i. In its discretion to approve or deny a special permit authorizing the modification of a nonconforming structure, the review board must consider the following:
 - a). The extent and nature of the proposed alteration;
 - b). The ability of conforming alterations to meet the demonstrated need of the Applicant;
 - c). Consistency of the proposed alterations with the evolution of neighboring structures.
 - d). Establishment of permeable lot surface, to the maximum extent possible.
 - e). Conformance to design guidelines in this Ordinance.
 - ii. The review board shall not grant a special permit authorizing an modification to an existing nonconforming structure that increases the degree of an existing nonconformity of the structure without finding that the alteration is not substantially more detrimental to the neighborhood.

6. Nonconforming Uses

- a. Description
 - i. A nonconforming use is a use that was lawfully established but that no longer complies with applicable standards because of the adoption or amendment of the Somerville Zoning Ordinance.
- b. Change of Use
 - i. A nonconforming use may change to a conforming use as indicated on Table 9.1 (see Article 9: Use Provisions).
 - ii. A nonconforming use may change to another nonconforming use that is from the same Use Category as the existing nonconforming use by Special Permit.
 - iii. A nonconforming use may not change to a different nonconforming use that is from a different Use Category than the existing nonconforming use (eg. an existing Banking or Financial Services use changing into a Restaurant, Bakery, or Cafe use in a district where neither is permitted).
- c. Alterations
 - i. The alteration of a nonconforming use within a structure may be permitted by Special Permit.
 - ii. A nonconforming use is considered to be altered in, but not limited to, the following circumstances:
 - a). any increase in gross floor area;
 - b). any increase in the number of dwelling units;
 - c). a change from seasonal to full-time operation; and,
 - d). any substantial increase in the number of

- automobile trips generated by the use.
- e). any change in hours of operation beyond the hours of 7:00am to 9:00pm

- d. Special Permits
 - i. In its discretion to approve or deny a special permit authorizing the change a nonconforming use to a different nonconforming use within the same Use Category as the existing nonconforming use, the Review Board must consider the following:
 - a). The findings for all Special Permits
 - b). The impact of the change in use to the neighborhood when compared to the existing nonconforming use.
 - ii. In its discretion to approve or deny a special permit authorizing alterations to a nonconforming use within a structure, the review board must consider the following:
 - a). The findings for all Special Permits
 - b). The extent and nature of the proposed alteration;
 - c). The ability of conforming alterations to meet the demonstrated need of the Applicant;
 - d). Consistency of the proposed alterations with the evolution of neighboring structures.
 - e). the impact of the alteration to the neighborhood when compared to the existing nonconforming use.

7. Nonconforming Site Characteristics

- a. Immunity
 - i. Nonconforming site characteristics, including parking and permeable area requirements, do not cause structures or uses that are otherwise conforming to the provisions of this Ordinance to become nonconforming.
- b. Alterations
 - i. Nonconforming parking lots cannot be expanded in violation or further violation of maximum parking requirements.
 - ii. Nonconforming landscape and permeable area cannot be further reduced.
- c. Improvement
 - i. Review boards may require nonconforming site characteristics to be brought into conformance with the provisions of this Ordinance as a condition applied to a discretionary or administrative permit.

8. Nonconforming Signs

- a. A nonconforming sign may alter content, but may not:
 - i. Be replaced with a sign that is larger in any dimension than the existing sign;
 - ii. Alter lighting technology, except to bring the technology into compliance with the ordinance.
- b. No establishment with a nonconforming sign may add

additional signs without bringing nonconforming signs into compliance.

9. Casualty

- a. Lawfully existing nonconforming real property destroyed by fire, explosion, weather, flooding, or act of public enemy can be reconstructed or restored by-right and requires only a zoning permit subject to the following:
 - i. there shall be no alteration to the degree of nonconformity from the state existing prior to destruction;
 - ii. reconstruction or restoration shall be started within a period of two (2) years of the date of destruction and shall be continued in a timely fashion until completed.
- b. No building permit shall be issued until a zoning permit has been granted by the Building Official.

10. Abandonment

- a. Lawfully existing nonconforming real property is considered abandoned when one or more of the following conditions exist:
 - i. the use is changed to a use permitted in the district where the property is located;
 - ii. the use is changed to a use protected under MGL 40A, Section 3;
 - iii. the use is discontinued, whether temporarily or permanently, with or without intent to abandon, for a period of two (2) years or more;
 - iv. equipment or furnishings necessary for the operation of the nonconforming use have been removed and not replaced for a period of one (1) year or more;
 - v. utilities, such as water, gas, or electricity to the property have been disconnected for over one (1) year; and/or
 - vi. reconstruction or restoration does not start within a period of two (2) years from the date of destruction of lawfully existing nonconforming real property.
- b. Nonconforming real property that has been abandoned shall not be reestablished or resumed until brought into conformance with this Ordinance.

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