

14 NONCONFORMANCE

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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 an existing NONCONFORMITY.
- c. The burden of proving that a LOT, STRUCTURE, USE, SITE characteristic, or SIGN is an existing 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. Existing 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 existing 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 the

provisions of this Ordinance due to its adoption or amendment.

- b. Unbuildable Lots
 - i. DEVELOPMENT is prohibited for any vacant LOT that is nonconforming to the LOT frontage requirement of §10.1.6.a (frontage on a THOROUGHFARE OR CIVIC SPACE) or to the LOT width or LOT DEPTH requirements for any BUILDING TYPE permitted for the zoning district where the LOT is located.
- c. Existing Structures
 - i. MODIFICATION of any existing PRINCIPAL BUILDING TYPE into a different BUILDING TYPE is prohibited for any LOT that is nonconforming to the LOT frontage requirement of §10.1.6.a.
- d. Land Platting
 - i. A LOT SPLIT, LOT MERGER, OR LOT LINE ADJUSTMENT, OR SUBDIVISION that would result in a new nonconforming LOT is prohibited.
 - ii. LOT SPLITS, LOT MERGERS, OR LOT LINE ADJUSTMENTS to any LOT that does not have frontage on a THOROUGHFARE or a CIVIC SPACE is permitted only when the split, merger, or adjustment dissolves the LOT or increases the conformity of ABUTTING LOTS.

5. Nonconforming Structures

- a. Description
 - i. A nonconforming structure is any PRINCIPAL BUILDING TYPE, building component, ACCESSORY BUILDING TYPE, OR ACCESSORY structure that was lawfully built, but that no longer complies with the provisions of this Ordinance due to its adoption or amendment.
- b. Ordinary Repair and Maintenance
 - i. NORMAL MAINTENANCE of a nonconforming structure is permitted.
- c. MODIFICATIONS
 - i. Any MODIFICATION to an existing PRINCIPAL BUILDING TYPE, building component, or ACCESSORY BUILDING TYPE that is not one of the BUILDING TYPES permitted in a zoning district is prohibited, except as follows:
 - a). Any conforming building component permitted within the same zoning district may be added to a nonconforming principal or ACCESSORY BUILDING TYPE by Special Permit.
 - b). MODIFICATIONS to a nonconforming principal OR ACCESSORY BUILDING TYPE USED for religious or educational activities per M.G.L. Chapter 40A, Section 3 are permitted in accordance with the largest permitted BUILDING TYPE.
 - ii. Any MODIFICATION to a permitted PRINCIPAL BUILDING TYPE, BUILDING component, OR ACCESSORY BUILDING TYPE that is nonconforming to any standard for that specific PRINCIPAL BUILDING TYPE, BUILDING component,

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OR ACCESSORY BUILDING TYPE is permitted, subject to the following:

- a). The creation of any new NONCONFORMITY is prohibited.
- b). Any increase in an existing NONCONFORMITY is prohibited.
- 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 conformance to this Ordinance is permitted.
- e. Special Permits
 - i. In addition to the review criteria for all Special Permits specified in §15.2.1.e. Review Criteria, the review board shall make findings considering the following in its discretion to approve or deny a special permit authorizing the MODIFICATION of a nonconforming STRUCTURE:
 - 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 applicable to the district where the property is located.
 - ii. The review boards may not grant a special permit authorizing any 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 addition to the review criteria for all Special Permits specified in §15.2.1.e. Review Criteria, the review board shall make findings considering the following in its discretion to approve or deny a special permit authorizing the change of a nonconforming USE to a different nonconforming USE within the same Use Category as the existing nonconforming USE:
 - a). The impact of the CHANGE IN USE to the neighborhood when compared to the existing nonconforming USE.
 - ii. In addition to the review criteria for all Special Permits specified in §15.2.1.e. Review Criteria, the review board shall make findings considering the following in its discretion to approve or deny a special permit authorizing alterations to a nonconforming USE within a STRUCTURE:
 - 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). 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

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- 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 may be reconstructed or restored by-right subject to the following:
 - i. MODIFICATION TO NONCONFORMITIES prior to destruction are not permitted;
 - ii. reconstruction or restoration must be started within two (2) years of the date of destruction and must be continued in a timely fashion until completed.
- b. The BUILDING OFFICIAL shall not issue a Building Permit or Certificate of Occupancy unless the 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 may not be reestablished or resumed until brought into conformance with this Ordinance.

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