

Section 7 – Proposed

The Manchester Planning Board has been working for two years to improve the town's Zoning Bylaws to be clearer and remove redundant sections and update to best practices.

A public hearing is scheduled for May 17 at 6:30 via Zoom and will be continued if needed on May 18. Town meeting is scheduled for June 11.

Section 7 Summary:

This is part of a change to reorganize and make our rules more compliant with case law.

Non-conforming uses currently in section 6.1 will be replaced and moved to section 7. Section 7 will be replaced and be moved to section 12.

Summary:

- Revise and expand this regulation to allow more flexibility in approving modifications or re-uses of properties that are not in compliance with zoning regulations. (Currently, any non-conforming property obtain a special permit from the ZBA for any modification, and must conform to the allowed uses within the zoning district.)
- Allows the ZBA some latitude in issuing special permits for a new non-conforming use as long as it determines that the new use will be less detrimental to the neighborhood.
- Allow changes by right to existing non-conforming structures as long as the non-conformity is not made worse by these changes.
- Provide for creative and productive new uses for existing buildings that are currently underutilized, while minimizing changes to the town's character and providing public oversight of the project.
- Reduce the burden on the ZBA by allowing reasonable modifications to existing buildings without the need and expense of a special permit.

Non-Conforming Uses

Motion

Delete section 6.1 of the Zoning Bylaw and insert a new section as follows:

SECTION 7.0 NONCONFORMING USES AND STRUCTURES

7.1 APPLICABILITY.

Except as herein after provided, this Bylaw shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building permit or special permit issued before the first publication of notice of the public hearing on this Bylaw or any amendments thereto, but shall apply to any change or substantial extension of such use, to a building permit or special permit issued after the first notice or said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use in a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or a structural change to a single or two family residential structure does not increase the nonconforming nature of said structure.

7.1.1 Commencement of Construction or Operation. Construction or operations under a building permit or special permit shall conform to any subsequent amendments to this Bylaw, unless the use or construction is commenced within a period of not more than twelve months after the issuance of the permit and in any case involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

7.2 NONCONFORMING USES.

The Zoning Board of Appeals may award a special permit to change a nonconforming use in accordance with this Section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

7.2.1 Permissible Changes. The following types of changes to nonconforming uses may be considered by the Zoning Board of Appeals:

1. Change or substantial extension of the use;
2. Change from one nonconforming use to another, less detrimental, nonconforming use. When a special permit is granted under this subsection, no use variance shall be required with regard to use or dimensional aspects of the application.

7.3 NONCONFORMING STRUCTURES.

The Zoning Board of Appeals may award a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this Section only if it determines that such

reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

7.3.1 Permissible Changes. The following types of changes to nonconforming structures may be considered by the Zoning Board of Appeals:

1. Reconstructed, extended or structurally changed;
2. Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.

7.4 VARIANCE REQUIRED.

Except as provided in Section 7.5, below, the reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a new nonconformity, shall require the issuance of a variance; the extension of an exterior wall at or along the same nonconforming distance within a required yard shall also require the issuance of a variance from the Zoning Board of Appeals.

7.5 NONCONFORMING SINGLE- AND TWO-FAMILY RESIDENTIAL STRUCTURES.

Nonconforming single- and two-family residential structures may be extended, altered, or structurally changed upon a determination by the Inspector of Buildings that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure, and that such reconstruction, extension, alteration or change does not increase the gross floor area of the structure by more than 100%.

7.5.1 Permissible Changes. The following circumstances shall not be deemed to increase the nonconforming nature of said structure and a building permit may be issued:

1. *Insufficient Area.* Alteration to a structure located on a lot with insufficient area which complies with all current setback, yard, building coverage, and building height requirements.
2. *Insufficient Frontage.* Alteration to a structure located on a lot with insufficient frontage which complies with all current setback, yard, building coverage, and building height requirements.
3. *Encroachment.* Alteration to a structure which encroaches upon one or more required yard or setback areas, where the alteration will comply with all current setback, yard, building coverage and not result in any increase in building height in the area of encroachment.

If the Inspector of Buildings determines that proposed alteration, extension or change exceeds the one or more of the criteria set forth above, the Zoning Board of Appeals may, by special

permit, allow such alteration, extension or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood. In the case of voluntary demolition of a single- or two-family structure, reconstruction thereafter shall be governed by Section 7.7.

7.6 ABANDONMENT OR NON-USE.

A nonconforming use or structure which has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to all of the provisions of this Bylaw; provided, however, that by special permit the Zoning Board of Appeals may reestablish a nonconforming use or structure otherwise abandoned or not used.

7.7 RECONSTRUCTION AFTER CATASTROPHE OR VOLUNTARY DEMOLITION.

Any nonconforming structure, other than a nonconforming single- or two-family dwelling governed by Section 7.5, may be reconstructed after a catastrophe or after voluntary demolition in accordance with the following provisions.

7.7.1 Procedures.

1. Reconstruction of said premises shall commence within three years after such catastrophe or demolition.
2. Building(s) reconstructed as of right shall be located on the same footprint as the original nonconforming structure and shall be only as great in gross floor area as the original nonconforming structure.
3. In the event that the proposed reconstruction would (a) cause the structure to exceed the gross floor area of the original nonconforming structure or (b) cause the structure to be located other than on the original footprint, a special permit from the Board of Appeals shall be required. Such special permit shall be obtained prior to demolition.

7.8 REVERSION TO NONCONFORMITY.

No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use.

7.9 SUBSTANDARD LOTS.

When a prior lawful nonconforming structure is located on a lot which does not meet current dimensional requirements, such lot shall not be changed, unless the change does not result in an increase of an existing nonconformity or a new nonconformity

7.10 EMINENT DOMAIN.

When a lot is changed by eminent domain so as to become deficient in area, frontage, building setback, or lot coverage, any structure located thereupon shall be considered a nonconforming structure subject to the rules of this Section 7.0.

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