

**Town of Trumbull
CONNECTICUT**

**Planning and Zoning
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PLANNING & ZONING COMMISSION

To: Members of the Trumbull Planning & Zoning Commission

From: Rob Librandi, Town Land Use Planner
James A. Cordone, Town Attorney

Re: Text Amendment to Revise
Article 1: General, Section 4: Nonconforming Lots, Uses, Buildings and/or
Structures

Date: March 1, 2023

1. **Summary of Revisions:** Article 1, Section 4, addresses nonconforming lots, uses, buildings and structures.

The proposed text amendment adds a new Section 4.3.3, which provides for an exception that allows existing, nonconforming houses in the single-family zones to expand or enlarge a nonconformity in certain situations.

This exception is allowed if the expansion:

- 1) does not create a greater infringement on a setback than the one that already exists (for example, going from a 10-foot side yard setback to a 5-foot side yard setback is not permitted, while building along the existing 10-foot side yard setback is permitted),
- 2) does not create a new nonconformity that didn't exist before the expansion, and
- 3) does not increase height beyond the highest point of the existing structure unless side yard setbacks are in compliance.

2. **Purpose of Revisions:**

This text amendment recognizes the fact that many homes in Town were built prior to the existing zoning requirements. These homeowners often have to obtain a variance from the ZBA to build an addition. The vast majority of these applications are approved by the

ZBA without any opposition from neighbors. This process can be time consuming and costly.

This text amendment will assist these homeowners while providing certain “safeguards” for neighbors (such as existing structures will not be built closer to neighbors than what already exists, or taller than what already exists).

Note, that this exception does not apply to vacant lots or commercial properties. It is solely for the benefit of existing homeowners in the single-family zones (AAA, AA, and A).

Finally, if this text amendment is approved, Town staff will develop a guide to help homeowner’s understand if the addition to their home complies with this exception or requires a variance.

ARTICLE I

SECTION 4: NONCONFORMING LOTS, USES, BUILDINGS, AND/OR STRUCTURES

4.0 Intent.

It is the intent of these Regulations to reduce all nonconforming uses, lots, buildings, and structures to conformity as quickly as possible and in no way to allow the extension or enlargement of the nonconformity unless specifically authorized in these Regulations. It is also the intent of these Regulations; however, to minimize undue hardship for those whose purchase, ownership, or use of the property predated applicable provisions of these Regulations.

4.1 Existing Nonconforming Lots.

4.1.1 No Increase in Nonconformity. No lot or parcel shall hereafter be decreased in size, by sale, devise, descent, gift, or otherwise, so that it or any part of it, or so that any structure or building thereon, shall fail to comply with these Regulations or shall increase the extent of any nonconformity.

4.1.2 Use of Nonconforming Lots, Merger. The construction of a permitted building or structure, or the establishment of a permitted use, on a nonconforming lot or parcel may be allowed by the Zoning Board of Appeals as a Special Permit in accordance with Article XV of these Regulations and subject further to the requirements set forth in this Section 4.1.2; provided, however, that if title to a nonconforming parcel or lot, whether improved or not, was, at any time after the adoption of Zoning Regulations in the Town of Trumbull (effective March, 1927), or is now, vested in any person(s) that own(s) any parcel or parcels of land contiguous to it, then so much of said contiguous land (including the nonconforming parcel) as is required to conform to these Regulations shall be deemed to be a single parcel for zoning purposes, and thereafter may not be divided, sold, transferred, or improved in any manner which would create or result in a nonconformity or in an increased or further nonconformity. In the event that all contiguous lands of said person(s) are together insufficient to meet the minimum requirements of these Regulations, then all said contiguous land shall be considered as a single nonconforming parcel for the purposes of this Section. The foregoing merger provisions shall not apply to any lot approved pursuant to the Trumbull Subdivision Regulations and Zoning Regulations as in force at the time of such approval, pursuant to Connecticut General Statutes Section 8-26a(b).

The construction of a permitted building or structure, or the establishment of a permitted use, on a nonconforming lot or parcel shall conform to all provisions of Article III (Lot and House Sizes) of these Regulations, and also to all other applicable provisions of these Regulations, except as the same may be varied by the Zoning Board of Appeals pursuant to these Regulations and the Connecticut General Statutes.

4.2 Nonconforming Uses.

4.2.1 No Extension or Enlargement. Any nonconforming use, as defined by these Regulations, shall be permitted to continue, notwithstanding any other provision of these Regulations or any amendment hereof, provided, however:

- a. Such use lawfully existed at the time of its establishment, and has not been abandoned, as defined herein.
- b. Except as provided in the preceding paragraph, such use shall not be altered in such manner as to increase the nonconformity of such use (see Section 4.2.3 below concerning substitution).
- c. Except as provided in paragraph (b), no nonconforming use shall be moved to any portion of a building, structure, or any part of a parcel of land where such use did not previously exist.
- d. A nonconforming use, if changed to a use in conformance with these Regulations, shall not thereafter be changed back to a nonconforming use.

4.2.2 Restoration and Repair of Buildings Containing Non-Conforming Use. A building or structure containing a nonconforming use may be altered or improved, but not extended or enlarged, and may be repaired or reconstructed as made necessary by normal wear and tear or deterioration. Any building or structure containing a nonconforming use, which has been destroyed or damaged by fire, explosion, flood, or any act of God or public enemy may be restored to the same dimensions, floor area and cubic volume lawfully existing immediately prior to such damage or destruction, provided such restoration is commenced within one (1) year, and completed within two (2) years of such damage or destruction.

4.2.3 Substitution. Any nonconforming use may be replaced with another nonconforming use, as a Special Permit before the Commission in accordance with Article XV (Special Permit) of these Regulations,

provided that such replacement use is consistent with the public health, safety and welfare; with the character of the neighborhood, adjacent properties and zones; with the appropriate and orderly development of the neighborhood, adjacent properties, and zones; and provided, further, that such replacement use creates no greater impact on the property, the neighborhood, adjacent properties and zones, in terms of parking, volumes and types of traffic, property values, hours of operation, exterior appearance of the building, structure or lot, or any other factors to be considered by the Board pursuant to Article XV of these Regulations.

4.2.4 Abandonment by Nonuse or Change of Use. Any non-conforming use shall lose its nonconforming status and shall thereafter conform to these Regulations if said use is abandoned for a period of one (1) year or more, or if it is altered to a conforming use. For any nonconforming use which has ceased operation or existence for any period of time, the Zoning Enforcement Officer may require evidence that the use was in fact carried on within the said one (1) year period, or that there was no intent to abandon the use, prior to the issuance of a Certificate of Zoning Compliance or issuance of a Cease and Desist Order. Refusal or granting of such a Certificate, or issuance of a Cease and Desist Order, may be appealed by any aggrieved party to the Zoning Board of Appeals, as provided by State statutes.

4.2.5 Voluntary Abandonment. Any person who has the right of re-establishment or reconstruction as provided in this Section 3 may elect voluntarily to abandon such right, in which case the right shall cease to exist. Such abandonment must be evidenced by a document filed in the Land Records of the Town of Trumbull.

4.3 Nonconforming Buildings and Structures.

4.3.1 No Enlargement or Alteration. Any nonconforming building or structure existing as of the effective date of these Regulations shall be permitted to continue notwithstanding any provision of these Regulations or any amendment hereof, provided, however, that such nonconforming building or structure shall not be enlarged or altered in such manner as to increase the nonconformity of such building or structure.

4.3.2 Restoration and Repair of Nonconforming Buildings and Structures. Nothing in these Regulations shall be deemed to prohibit the repair and maintenance of a nonconforming building or structure, provided such repairs or maintenance do not increase the non-conformity of such building or structure. Likewise, any nonconforming building or structure may be enlarged, provided such enlargement is constructed within the

applicable requirements of Article III. Any nonconforming building or structure which has been destroyed or damaged by fire, explosion, flood, or any act of God or act of public enemy by more than 50% of the fair market value of the building or structure at the time of such damage, as determined by The Board of Assessors, may be restored to the same dimensions, floor area, cubic volume, density, and site location as existing immediately prior to such damage or destruction, provided.

- a. that the land on which said building or structure is to be restored or re-erected shall be properly graded and landscaped and that any such building or structure shall be restored or re-erected so as to conform architecturally to surrounding structures, such grading, landscaping and architectural design to be consistent with the character of the neighborhood in which said building or structure is to be located and to be done in such a manner that said building or structure will not depreciate property values in said neighborhood.
- b. that adequate provision for off-street parking is made for vehicles belonging to employees, customers and others using said buildings or structures.
- c. that provision is made for entering and leaving the property on which such building or structure is located in such a manner that no traffic hazards will be created.
- d. that the party applying for said approval and proposing to restore or re-erect said buildings or structures is financially responsible and has made arrangements for financing the cost of the construction, landscaping and other improvement of the property involved and has agreed to enter into construction contracts which require the improvement of said property and the restoration or re-erection of said buildings or structures in accordance with the terms and conditions of any approval which said Board shall grant hereunder.
- e. that the use which it is proposed to conduct in said buildings or structures as restored or re-erected hereunder is not in any way noxious or offensive by reason of noise, odors, dust, smoke or fumes.

In granting approval under the provisions of this paragraph, the Zoning Board of Appeals may order and impose such further conditions, requirements and limitations as it shall deem necessary to insure that said buildings or structures are restored or re-erected in such a manner as to minimize any adverse effect of said nonconforming use of buildings or structures on the neighborhood within which the same is located, bearing in mind the purposes as set forth in the General Statutes of the State of Connecticut, and, at the same time, avoiding undue hardship on

the person carrying on such nonconforming use or restoring or re-erecting such buildings or structures.

4.3.3 Exception for Single Family Residence Zones AAA, AA and A: For a Lot containing a one family Dwelling and located in Residence Zones AAA, AA or A, a building or structure may be enlarged or altered in such a manner as to increase the nonconformity by approval of the Zoning Enforcement Officer and without the need for a variance, provided that:

- a. the enlargement or alteration is in keeping with the existing nonconforming front, rear or sideyard setback, and does not increase further into the existing front, rear or sideyard setback;
- b. the enlargement or alteration does not create an additional nonconformity that did not exist prior to the enlargement or alteration; and
- c. the enlargement or alteration does not increase the height of a building or structure beyond the height of the existing building or structure even if the height is in compliance with the current zoning requirements, however an increase in height is permitted if the building or structure complies with the sideyard setbacks.

If the enlargement or alteration does not meet the requirements set forth above, then the enlargement or alteration is prohibited without a variance from the Zoning Board of Appeals.

4.4 Illegal Use.

Nothing in these Regulations, including the provisions of this Section 3, shall be interpreted as authorization for or approval of the continuation of the use of land, buildings or structures which are in violation of any Zoning Regulations in effect prior to the effective date of these Regulations.

4.5 Special Permits and Variances, Amendments to Regulations or Zones.

- a. Applications Filed. In accordance with Connecticut General Statutes Section 8-2h, as amended, no application filed with the Commission which is in conformance with these Regulations as of the date of its filing shall be required to comply with, nor shall it be disapproved for the reason that it does not comply with any change in these Regulations or the boundaries of any zone taking effect after the filing of such application.
- b. Approvals Granted. In accordance with Connecticut General Statutes Section 8-3(h), nothing in these Regulations or any amendment hereof, nor any change in zoning classification, shall be deemed to require any change in the plans, construction, or designated use of any residential building, structure or property for which a Special Permit, Special Exception, or variance has been obtained and filed as required by these Regulations or the Connecticut General Statutes, as the case may be, prior to the effective date of these Regulations or such amendment or change in zoning classification, provided, however, that, for non-residential property, the applicant shall commence construction of any building or structure, or the establishment of any use, within twelve (12) months of the effective date of such approval; said construction or establishment shall be completed according to the approved plans by the applicant, and a Certificate of Zoning Compliance and Certificate of Occupancy, where required, shall be issued, within twelve (12) months of the effective date of such approval. Any such approval not completed within the time limits contained in this Section shall be void. For residential property, all improvements required pursuant to the Special Permit, Special Permit, or variance, shall be completed within the time periods set forth in the General Statutes upon the effective date of such Special Permit, Special Permit or variance, or it shall be void and shall thereafter be required to conform to any amendment of these Regulations or zone change classification. For good cause shown, the above time periods may be extended by the Zoning Board of Appeals or the Commission, as the case may be.

4.6 Expiration of Special Permits, Special Permits, and Variances.

See, Article V, (Administration and Enforcement).