

Proposed amendments for Sec. 3.8.B., Nonconforming Structures, and Sec. 9.7, Variances, to add Setback Waiver provisions

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(omitting setback waivers & moving that language into revised Sec. 9.7)

(B) A nonconforming structure:

- 1) may undergo routine maintenance and repair within the existing footprint, or restored or reconstructed after damage or destruction from any cause, provided that the repair or reconstruction does not increase the degree of ~~noncompliance~~ nonconformity; these projects do not require a permit.
- 2) A nonconforming structure may be moved on the site, provided that the new location fully meets dimensional standards; these projects require a zoning permit.
- 3) may be demolished and re-built on the same parcel, provided that the location of the new structure is less nonconforming than the original structure; these projects may be allowed as a conditional use if approved by the Development Review Board per standards as outlined in Sec. 3.8.B.4 (below).
- 4) may only be structurally ~~modified~~ altered in a manner that will not increase the degree of non-conformity, unless approved by the Development Review Board through conditional use review under Section 5.4. Any structural alteration which extends the building footprint or increases the height of a structure further into a setback than the existing structure shall be considered to increase the degree of non-conformity. Conditional use review by the Development Review Board shall be based upon findings that verify the project's conformance to Sec. 9.7.B standards.
- 5) Any structural alteration of a nonconforming structure which does not encroach further into the setback, does not increase the height of the non-conforming part of a structure, or extends the structure's footprint outside of any setback, shall not be considered to increase the degree of non-conformity, and may be permitted if the project meets all dimensional standards, as determined by the Zoning Administrator.

~~(3) may be repaired, restored or reconstructed after damage from any cause provided that the repair or reconstruction does not increase the degree of noncompliance which existed prior to the damage, is commenced within one year of the date of the event that led to the damage, and is substantially completed within two (2) years of the damage or destruction, in accordance with Section 3.1. The Development Review Board may, on appeal, grant a one (1) year extension to this deadline upon a determination that the delay was unavoidable and that the owner had acted to substantially complete the repair, restoration or reconstruction within the initial one (1)-year period. Any non-conforming structure in the Flood Hazard Overlay Area District must meet the standards of Section 5.6.~~

(C) [retain as is; addresses continued use of structures that are deemed unsafe &/or uninhabitable]

Section 9.7 Waivers and Variances

(A) Purpose. The purpose of this section is to allow for the reasonable use and development of an existing, legally established nonconforming lot or structure, while ensuring that a proposed development does not have an undue adverse effect on adjoining properties, resources or uses.

(B) Setback Waivers. The Development Review Board (DRB), in association with site plan review, conditional use review, or on appeal of a Zoning Administrator's determination under Section 9.3 may, for an existing, legally established nonconforming lot or structure, reduce minimum district setback requirements (under Tables 2.1 – 2.8) or minimum surface water and wetland setbacks (under Section 3.15) in accordance with the Act [§ 4414(8)] and the following requirements:

(1) A waiver under this section may be granted by the DRB only as necessary to:

(a) allow for the reasonable development and use of a nonconforming lot under Section 3.7(C).

(b) allow for an addition or improvement to a nonconforming structure under Section 3.8(B).

(c) comply with federal or state public health, safety, access and disability standards, or

(d) allow for the siting of a renewable energy structure.

(2) A waiver request, including information regarding the specific circumstances, need and justification for the waiver shall be submitted in writing with the application for site plan or conditional use review, or with the filing of an appeal under Section 9.5 of a Zoning Administrator's determination that the proposed development does not conform to required setbacks.

(3) The minimum required setback distance shall be reduced by no more than 50% under this provision. In granting a waiver, a minimum setback distance of 10 feet shall be maintained. Variance approval under subsection (C) shall be required for any further reduction in the required setback distance beyond 50% or ten feet.

(4) In granting a waiver under this section, the DRB shall find, based upon clear and convincing evidence, that the standards for allowing a waiver under Section 9.6(B)(1) have been met, and that:

(a) Due to physical site or lot line constraints, no reasonable alternative exists for siting the structure, addition or improvement outside of the required setback area, in conformance with the regulations.

(b) The waiver, if authorized, will not:

- 1) alter the essential character of the neighborhood or district in which the property is located;
- 2) substantially or permanently impair or interfere with the use or development of, or access to, an adjacent property, right-of-way, surface water or wetland;
- 3) result in any upper floor's area exceeding that of the ground floor;
- 4) reduce access to renewable energy resources; or
- 5) be detrimental to the public welfare.

(c) The waiver, if authorized, represents the minimum setback reduction necessary to allow for the proposed development.

(d) Any potential adverse impacts to adjoining properties, rights-of-way, surface waters or wetlands resulting from reduced setbacks shall be mitigated through site design, landscaping and screening, additional vegetated buffering or other mitigation measures proposed by the applicant that are acceptable to the Development Review Board.

(C) Variances [same as existing Sec. 9.7, no changes]

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Advantages of this approach:

- Broadens scope of waivers from just subdivisions and CU expansions of existing NC structures to also address site plan reviews & appeals of a ZA denial due to setback violations, without requiring variance review
- For subdivided lots, avoids need for full-bore subdivision amendments to correct builder errors in placing structures on a lot (because conditional use reviews are less costly & simpler)
- Restricts consideration of waivers to defined situations (laid out in (B)[1]) & limits setback waivers to no more than 50% of setback or 10 feet.
- Sets specific standards for granting waivers, in Sec. B.4 a. – d., with reasonable limitations based upon impact to neighboring properties, community, height restrictions, etc.
- Requires applicant to mitigate any adverse impacts to adjoining properties, rights of way, surface waters and wetlands through site design, landscaping and installing buffers.