

Proposed amendments for Sec. 3.8.B., Nonconforming Uses of Land & Structures - v6b - 12.11.2023 *(with setback waivers included)*

(A) Nonconforming Uses *(unchanged)*

(B) Nonconforming Structures. Any structure, or portion thereof, legally in existence as of the effective date of these regulations which does not comply with the requirements of these regulations as adopted, or as subsequently amended, shall be considered a nonconforming structure. A nonconforming structure: ~~may continue to be occupied indefinitely in accordance with the Act [4412(7)], subject to the following limitations.~~

- 1) may undergo routine maintenance and repair, ~~or be restored or reconstructed after damage or destruction within the existing footprint~~, provided that such action ~~the repair or reconstruction~~ does not increase the degree of ~~noncompliance~~ nonconformity; ~~these projects do not require a zoning permit. (see figure 1)~~
- 2) may be reconstructed within the existing footprint after severe damage or total destruction; see Sec. 3.1. Requires a zoning permit.
- 3) ~~Any structural alteration of a nonconforming structure~~ may be altered or relocated on site if the proposed change: ~~which~~
 - a) does not encroach further into the setback;
 - b) does not increase the height of the non-conforming part of a structure; or
 - c) does not extend the structure's footprint into any setback

Requires a zoning permit. (see figure 2, figure 3)

- 4) may be demolished and re-constructed on the same parcel, provided that the new location of the rebuilt structure is more conforming to dimensional standards than the original structure (as measured by total encroachment into the setbacks before vs. after reconstruction), and that the reconstruction retains at least 10% of the former footprint of the structure. These projects may be allowed if approved by the Development Review Board through conditional use review. (see figure 4)
- 5) may be structurally ~~altered~~ in a manner that will ~~not~~ increase the degree of non-conformity only if approved by the Development Review Board through conditional use review under Section 5.4. Any structural alteration which extends the building footprint further into a setback, or increases the height of a structure that extends further into a setback than the existing structure shall be considered to increase the degree of non-conformity. (see figure 5)
- 6) Conditional use approval by the Development Review Board for projects listed in B)4 and B)5 above shall address the following, in addition to general and specific standards under Sec. 5.4:
 - (a) The modification, if authorized, represents the minimum setback reduction necessary;
 - (b) The alteration will not have an undue adverse impact on adjoining properties, or encroach into wetland buffers or required setbacks to bodies of water;
 - (c) The resulting structure's character, footprint and height shall be compatible with the character and scale of surrounding structures;
 - (d) In no case shall this alteration result in the upper floor of a nonconforming part of a structure extending further into the setback than the ground floor.

(7) In the event there is no reasonable siting alternative for a proposed alteration or relocation of a nonconforming structure due to physical site constraints, the Development Review Board may modify a required setback distance by no more than 50% as necessary to allow a nonconforming structure to be structurally altered or relocated in a manner that increases the degree of nonconformance. In granting a modification, a minimum setback distance of ten (10) feet shall be maintained; any further reduction in the minimum setback distance beyond 50% or ten feet shall require variance approval under Section 9.7.

(8) Any potential adverse impacts to adjoining properties or rights-of-way from reduced setbacks shall be mitigated through site design, landscaping and screening, or other mitigation measures acceptable to the Development Review Board.

~~(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) Nothing in these regulations shall be construed as allowing the continuation of a use or occupancy of a structure that has been declared to be unsafe by an appropriate governmental authority (e.g., Health Officer) ~~to be unsafe~~, or ~~to that~~ poses a threat to public health or safety.

[new—revision of Sec. 3.1, from p. 22]

Proposed amendment to Sec. 3.1, Repair of Damaged Structures; Demolition:

(A) **Repair of Damaged Structures.** No zoning permit shall be required for the stabilization, repair, or restoration, ~~or reconstruction~~ of a damaged structure to the extent of its prior condition and use. ~~Unless other timelines are approved by the Development Review Board, stabilization of a damaged structure shall occur in a reasonable amount of time following the event resulting in damage, in order to prevent hazards to public health and safety and adjoining properties. [see also Section 3.8]~~

- 1) Stabilization of the damaged structure must commence within a reasonable amount of time following the event resulting in damage in order to prevent hazards to public health and safety and adjoining properties.
- 2) Repairs or restoration shall commence within one year of the date of the event that led to the damage, and be substantially completed within two (2) years of the damage or destruction.
- 3) The Zoning Administrator may, upon request, grant a 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 or restoration within the initial one 1-year period. [see also Section 3.8]

(B) **Demolition.** If the property owner abandons a damaged structure, or does not complete repairs within the timeframes stipulated in (A) above, the owner must secure the site with barriers to prevent access to the damaged structure, or demolish the structure. If demolished, all materials shall be disposed of per Chittenden Solid Waste District standards, the site shall be restored to a normal grade, and ground cover shall be established sufficient to prevent erosion. These activities do not require a zoning permit.

(C) **Replacement of Damaged Structures:** A zoning permit is required for the total replacement of a structure that has sustained damage to 50% or more of the original structure. The replacement structure must conform to all dimensional standards, unless conditional use approval is secured from the Development Review Board per Sec. 3.8.B.

[revised Setback definition, from p. 129:]

Setback: Setbacks between buildings and property lines provide access to light and air, provide fire separation and access, and maintain the existing neighborhood pattern of buildings and open spaces between them and to the road. A setback is the horizontal distance from a road (see below), lot line, boundary or other delineated feature (e.g., a stream bank, shoreline, or wetland area), to the nearest part of a structure (as defined herein) or, where applicable, a wastewater system (including leach field and septic tank) located on the premises. In the case of a public highway, the setback distance shall be measured from the limit of the highway right-of-way or 25 feet from the centerline of the highway, whichever is greater. In the case of a private road, the distance shall be measured from the edge of the road right-of-way. In the case of a driveway, no front setback to structures is required or created.