

Proposed amendments for Sec. 3.8.B., Nonconforming Uses of Land & Structures - v6d - 12.18.2023 *(with setback waiver language moved to new Sec. 9.7.B)*

(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, provided that such action does not increase the degree of ~~noncompliance~~ nonconformity. Per Sec. 9.2, these projects do not require a zoning permit. (see figure 1)
- 2) may be reconstructed within the existing footprint; see Sec. 3.1. Requires a zoning permit.
- 3) may be altered on site if the proposed change:
 - a) does not encroach farther into any setback; and
 - b) does not increase the height of the non-conforming part of a structure.

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

- 4) may be relocated or 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 area 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 ~~unless~~ 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 setback modification standards in Sec. 9.7.B, in addition to general and specific standards under Sec. 5.4:
- 7) Adverse impacts to adjoining properties or rights-of-way from reduced setbacks shall be mitigated through site design, landscaping, 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) If required due to risk of collapse, stabilization of the damaged structure must commence within a reasonable amount of time following the event resulting in damage, to prevent hazards to public health and safety, and to 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 to add possibility of waiving setbacks outside of subdivision & nonconforming structure reviews:]

Section 9.7 Setback Modifications and Variances

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

(B) **Setback Modifications.** 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 setback modification 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 at least 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 9.7(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) reduce access to renewable energy resources: or
- 4) 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 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.

7.C Variances *[unchanged; renumber existing 9.7 A-D]*

[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.