

[to allow reducing setbacks outside of subdivision reviews, e.g. for site plans, ZPs:]

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.

9.7.C. Variances *[otherwise unchanged]*

[alternative: consider making this a new Sec. 3.9, instead of folding into Sec. 9.7]