

ZONING BY-LAW
NEEDHAM, MASSACHUSETTS

1. GENERAL

1.1 Purpose

The purpose of this By-Law is to promote the health, safety, convenience, morals or welfare of the inhabitants of Needham; to lessen congestion in the streets; to conserve health; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; to conserve the value of land and buildings; to encourage the most appropriate use of land throughout the Town and to preserve and increase amenities under the provisions of General Laws, Chapter 40A. The use, construction, alteration, height, area and location of buildings and structures and the use of premises in the Town of Needham are regulated as hereinafter provided.

1.2 Basic Requirements

Any building or structure hereinafter erected, reconstructed, altered, enlarged, or moved or any use of premises hereinafter established, altered or expanded in the Town of Needham shall be in conformity with the provision of this By-Law. Any use not specifically or generically enumerated in a district herein shall be deemed prohibited. In accordance with General Laws, Chapter 40A, and notwithstanding any provisions to the contrary, this By-Law shall not prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the Commonwealth, or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination or by a non-profit educational corporation, provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.

1.3 Definitions

In this By-Law the following terms shall have the following meanings unless a contrary meaning is required by the context or is specifically prescribed. Words used in the singular include the plural and words used in the plural include the singular. Words used in the present tense include the future.

Accessory Building – a building devoted exclusively to a use subordinate to and customarily incidental to the principal use.

Accessory Dwelling Unit (ADU) – An apartment in a single-family detached dwelling that is a second, self-contained dwelling unit and a complete, separate housekeeping unit containing provisions for living, sleeping, cooking and eating. This unit shall be subordinate in size to the principal dwelling unit on a lot and shall be constructed to maintain the appearance and essential character of the single-family dwelling.

Accessory Use – a use subordinate to and customarily incidental to the principal use.

Adult Day Care – a facility offering daytime programs for older adults providing health care and assessment, personal care, social programs, recreational activities, meals and transportation, but not providing overnight or residential accommodations.

Affordable Housing Unit - A dwelling unit that is affordable to and occupied by a household with income at or below eighty (80) percent of the area median income that applies to subsidized housing in the Town of Needham, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development (HUD), and meets all applicable requirements for inclusion on the Chapter 40B Subsidized Housing Inventory. Except as may be provided elsewhere in this bylaw, each affordable housing unit shall be eligible for inclusion in the Chapter 40B Subsidized Housing Inventory, in accordance with regulations or policies of the Massachusetts Department of Housing and Community Development (DHCD). As used in this bylaw, “affordable housing unit” and “affordable unit” shall have the same meaning.

Affordable Housing Restriction - A contract, mortgage agreement, deed restriction, or other legal instrument, acceptable in form and substance to the Town of Needham, that effectively restricts occupancy of an affordable housing unit to qualified purchaser or qualified renter, and which provides for administration, monitoring and enforcement of the restriction during the term of affordability. An affordable housing restriction shall run with the land in perpetuity or for the maximum period of time allowed by law, and be enforceable under the provisions of M.G.L. c.184, ss. 31-33 or other applicable state law. The Board of Selectmen of the Town of Needham may accept, hold, and enforce affordable housing restrictions.

Antenna – a device used for transmitting or receiving radio, television or other type of electronic waves.

Assisted Living and Alzheimer's/Memory Loss Facilities – Convalescent or nursing homes that may not be licensed as skilled nursing facilities by the Massachusetts Department of Public Health, but cater to individuals who need some degree of assistance in caring for themselves and are certified, licensed, or otherwise approved by the Executive Office of Elder Affairs or other Commonwealth of Massachusetts governmental entity.

Basement – That portion of a building that is partly or completely below grade. A minimum of 50% of the area of the basement walls must be below grade to be considered a basement. Only one basement level may be partly below grade; additional basement levels must be

completely below grade. Notwithstanding the above, a walkout basement shall be limited to a maximum height of 10 feet with said height measured from the plane of the finished basement floor to the plane of the underside of the first floor joists directly above. For purposes of this definition, area shall be computed by taking the exterior perimeter of basement walls, whether or not exposed, multiplied by the height of all walls, whether or not exposed.

Building (or part or parts thereof) – a combination of any materials, whether portable or fixed, having a roof to form a structure for the shelter of persons, animals or property. Roof shall include an awning or any similar covering whether or not permanent in nature.

Christmas Season – a period of time from the Saturday before Thanksgiving Day until January 4 of the following year.

Complex Development – any development made subject to the provisions of Section 6.6 Complex Development by designation (“SPC”) in Section 3.2 Use Regulation Schedule, based on size and general category of use.

Conforming Use – use of buildings, structures or land which complies with all the use and dimensional requirements of the zoning district in which the use is located.

Continuing Care Retirement Community – A Continuing Care Retirement Community, whether or not governed by M.G.L. Chapter 93, Section 76, is also sometimes called a life care community, allowing residents to “age in place”. Facilities are on a campus of one or more contiguous parcels that includes separate housing for those who live independently, which may include communal dining for one or more meals, assisted living facilities that offer more support, and nursing homes for those needing skilled nursing care.

Coverage – that portion of a lot that is covered or occupied by any building or structure; underground buildings or structures devoted solely to parking are exempt from the definition of coverage, if the ground area immediately above said underground building or structure is equal to or no higher than 3 feet above the lowest elevation, as determined by the existing street grade measured at its centerline in front of the underground building or structure, and is devoted to surface parking, landscaping or other elements of off-street parking areas as provided for in Section 5.1 of the Zoning By-Law.

Dormer – A projection built out from a sloping roof, usually containing a window or vent.

Dwelling – any fixed structure containing one or more dwelling units, but not including hotels, motels, boarding houses, or structures solely for transient or overnight occupancy.

Dwelling Unit – a room or group of rooms designed and equipped exclusively for use as living quarters for only one family including provisions for living, sleeping, cooking and eating.

Dwelling, Multi-Family - A building in the Needham Center, Chestnut Street or Garden Street Overlay District containing three or more dwelling units, which building houses only residential uses.

Family – (1) one or more persons related by blood or marriage and including not more than eight additional persons of which not more than six may be foster children and not more than four may be persons other than foster children, or (2) not more than five unrelated individuals per dwelling unit where one individual is the resident owner of the property, all living as a single housekeeping unit, or (3) not more than three unrelated individuals per dwelling unit living as a single housekeeping unit. The Board of Appeals may issue a special permit for up to two additional individuals per dwelling unit.

Farmers Market – A Farmers Market is activity which is comprised predominantly of activity whereby a) farmers display and sell (i) items that have been produced on farms they operate or (ii) items that have been produced on other farms through a farmer-agent relationship (such items to include food, flowers, plants, firewood, preserves, baked goods, soaps, wool products and similar items), such sales to be directly to the public and not through wholesale vendors, by the farmer, the farmer’s employees, or farmer-agents, and b) bakery establishments display and sell their baked goods, such sales to be directly to the public and not through wholesale vendors, by the bakery establishment, its employees, or farmer-agents. A farmer-agent is defined as a farmer who is acting on behalf of another farmer (or bakery) on the basis of a direct contractual relationship with such farmer (or bakery) and there is no intermediary.

Floor Area, Gross – the sum of the areas of the several floors of each building on a lot including areas used for human occupancy in basements, attics, and penthouses, as measured from the exterior faces of the walls, but excluding cellars, unenclosed porches, balconies, attics, or any floor space in accessory buildings or in main buildings intended and designed for the parking of automobiles or for accessory heating and ventilating equipment, laundry, or accessory storage.

Floor Area Ratio (FAR) – the floor area divided by the lot area. Floor area shall be the sum of the horizontal areas of the several floors of a building as measured from the exterior surface of the exterior walls. Parking garages, interior portions of building devoted to off-street parking, and deck or rooftop parking shall be considered floor area.

Frontage – a continuous portion of a sideline of a way, public or private, between the sidelines of a lot in common ownership and in the case of a corner lot, between a sideline of such lot and the intersection of sidelines of ways or the midpoint of the curve connecting such sidelines. No lot shall be required to have frontage on more than one way. No lot shall be deemed to have frontage unless there exists safe and convenient vehicular access from said lot to a street or way.

Green Building - A building designed, constructed, and operated and maintained throughout its life cycle to conserve energy and water, reduce environmental impacts, and protect the health of the general public and occupants of the building.

Health-Care Facility – Premises licensed to provide care on a relatively long-term basis to persons admitted thereto, comprising nursing homes, rest homes, sanitariums, convalescent homes, hospices, long-term pediatric or geriatric care facilities, extended care or rehabilitation facilities, and physical, psychiatric, psychological, cognitive, or behavioral therapy facilities, whether or not owned by or affiliated with a hospital.

Height – the vertical distance of the highest point of a structure or the roof of a building above the average grade of the ground adjoining the building or surrounding the structure.

Heliport, general – an area used by helicopters which includes passenger and cargo facilities and regularly scheduled passenger and cargo service, aircraft maintenance and repair, fueling service, storage space, hangars and accessory buildings, and/or overnight storage.

Heliport, limited – an area on a roof or on the ground used by helicopters for the purpose of picking up or discharging passengers or cargo, but not including fuel service, maintenance or overhaul, hangars or other accessory buildings, or overnight storage (except when removal is prohibited due to atmospheric conditions or mechanical difficulties).

Hospital – A facility licensed as a hospital under Section 51 of Chapter 11, M.G.L., and maintained for the purposes of caring for persons admitted thereto for diagnosis or medical, surgical, restorative or other treatment that is rendered within said facility. A hospital may include but shall not be limited to such related on-premises facilities as laboratory and radiology services, out-patient departments, medical equipment rentals, patient and retail pharmacy, physical, speech and occupational therapy, transitional care and rehabilitation respite, palliative care, birthing facilities, pediatrics, mental health and behavioral medicine, specialty clinics, radiation oncology, alternative medicine treatment, mobile diagnostic services, meeting and conference facilities, stock rooms, laundries, staff and administrative offices.

Hospital, Community – An acute hospital in which a majority of the case mix consists of medical-surgical, pediatric, obstetric, and maternity cases, providing a broad range of health services primarily to those who work or live in Needham and surrounding communities, with no single dominant specialization.

Hospital, Pediatric - A Hospital in which not less than three-quarters of its patients are Pediatric Patients as defined in 105 CMR 130.700 and which provides a broad range of ambulatory and inpatient services to children and young adults under the age of twenty-six (26).

Hotel or Motel – a building intended and designed solely for transient or overnight occupants and divided into separate units or rooms within the same building and with or without public dining facilities.

Independent Living Apartments – A building in the Elder Services Zoning District containing three or more dwelling units, which building houses only residential uses and support services accessory thereto, intended primarily as independent living units for individuals aged 55 years or older, and/or families with at least one family member aged 55 years or older, within a Continuing Care Retirement Community.

Indoor Athletic or Exercise Facilities – A commercial facility which as its primary purpose provides facilities for individual physical health activities, such as aerobic exercise, running and jogging, use of exercise equipment, saunas, showers, massage rooms and lockers. Such establishments are operated as a business even if open only to members and their guests on a

membership basis and to the public at large paying a daily admission fee. All facilities must be contained within the building.

Landscaping – any grading or relocation of earth not resulting in the change of the elevation of any land within a Flood Plain District.

Lot – a single area of land, in one ownership throughout, defined by metes and bounds or boundary lines as shown in a recorded deed or on a recorded plan. The area of a lot shall not include any part of a way, public or private, which adjoins the lot.

Lot, Corner – a lot at the point of intersection of, and abutting on, two or more intersecting streets, the angle of intersection of the street lines or, in the case of a curved street, street lines extended, being not more than one hundred and thirty-five (135) degrees.

Lot Line – a recorded boundary separating a lot from a street or adjoining lots; for example, front, side and rear lot lines.

Medical Clinic – An institution or facility providing medical, surgical, dental, restorative or mental hygiene services to persons not accommodated overnight therein, under license as a clinic under Massachusetts General Laws, whether or not affiliated with a hospital or other health care facility.

Medical Facility, Pediatric - shall mean a facility with one or more of the following uses each primarily (not less than three-quarters) for children and young adults under the age of twenty-six (26), where, in each case, the uses are owned, operated or managed directly by a Pediatric Hospital or through a corporate affiliate controlled by a Pediatric Hospital (excluding any affiliate which is a hospital whose primary purpose is the provision of health care services to adults): (i) doctor's offices, dentist's offices, orthodontic services, psychiatric, psychological and other mental health services, imaging and laboratory services, sale, rental and repair of medical devices and equipment or other health care or health care services on an ambulatory or outpatient basis; (ii) professional, business or administrative office; (iii) a medical clinic or medical, surgical, psychiatric, dental, orthodontic, or psychologist group practices comprised of three or more such professionals; (iv) facility for the provision of testing, analytical, diagnostic, pharmaceutical or other health care support services, equipment or procedures; (v) Determination of Need Required Equipment or Determination of Need Required Services as each is defined in 105 CMR 100; (vi) cell generation, gene therapy, and infusion treatment; (vii) medical offices; (viii) diagnosis or medical, surgical, restorative or other treatment that is rendered within said facility on an ambulatory or outpatient basis, including, without limitation, patient and retail pharmacy, physical, speech and occupational therapy, transitional care and rehabilitation respite, palliative care and behavioral medicine, specialty clinics, radiation oncology, alternative medicine treatment, mobile diagnostic services, meeting and conference facilities, stock rooms, laundries, staff and administrative office; (ix) accessory uses customarily conducted in coordination with any of the foregoing, including, without limitation, retail establishments, cafeteria, gift and coffee shops, indoor athletic exercise facility, and research laboratories.

Medical Laboratory – A facility for the provision of testing, analytical, diagnostic, pharmaceutical or other health care support services, equipment or procedures, whether or not owned by or affiliated with a hospital.

Medical Marijuana Treatment Center – A facility operated by a not-for-profit entity registered and approved by the Massachusetts Department of Public Health in accordance with 105 CMR 725.000 or succeeding regulation pertaining to the registration of such facilities, and pursuant to all other applicable state laws and regulations, also to be known as a Registered Marijuana Dispensary (RMD), that acquires, cultivates, possesses, processes (including development of related products such as edible marijuana infused products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to patients or their personal caregivers registered and qualified under the provisions of 105 CMR 725.000 (“Qualified Patients or Qualified Caregivers”) or succeeding regulation pertaining to the registration and qualification of Qualified Patients and Qualified Caregivers. A Medical Marijuana Treatment Center may include facilities which cultivate and/or process marijuana for medical use.

Medical Services Building – Premises with occupancy limited to doctor’s offices, dentist’s offices, orthodontic services, psychiatric, psychological and other mental health services, radiology and laboratory services, sale, and repair of medical devices and equipment or other health care or health care services, whether or not owned or affiliated with a hospital, but not including those licensed as a clinic.

Mixed-Use Building - A building in the Needham Center, Chestnut Street or Garden Street Overlay District in which the ground floor facing the street is used for such retail or restaurant uses as may be permitted by right or by special permit in the applicable overlay district, and other ground-floor and upper-floor space is used for other commercial use(s) or dwelling unit(s).

Mixed-Use Development - Two (2) or more buildings in the Chestnut Street Overlay District on one lot, with retail use(s) or mixed-use buildings facing the street and other buildings for commercial use(s), mixed uses or multi-family dwelling(s) located to the rear of the lot, connected by walkways, landscaping and pedestrian amenities, and shared parking.

Motor Home – a vehicle with motive power designed for sleeping or living quarters for one (1) or more persons, which is not a dwelling and which may include a pick-up camper and beach buggy.

Needham Center Off-Street Parking Fund - A special revenue fund established under Chapter 438 of the acts of 2008 to support the provision of off-street parking in the area governed by the act.

Non-Conforming Building – a building or structure lawfully in existence or lawfully begun before the first publication of notice of the public hearing regarding a zoning by-law that would otherwise render said building or structure not in compliance with such a new or amended by-law, but not including a non-conforming building or structure resulting from a variance or other relief granted by the Board of Appeals.

Non-Conforming Use – a use of buildings, structures or land lawfully in existence or lawfully begun before the first publication of notice of the public hearing regarding a zoning by-law that would otherwise render said use not in compliance with such a new or amended by-law, but not including a non-conforming use resulting from a variance or other relief granted by the Board of Appeals.

Off-Site Medical Marijuana Dispensary – A facility registered and qualified as a Registered Marijuana Dispensary under the provisions of 105 CMR 725.000, which is located off-site from a separate location of the same RMD or from an affiliated RMD where marijuana or related products are cultivated or processed, and that is controlled and operated by the same registered and approved non-profit entity that operates the separate location or affiliated RMD where marijuana or related products are cultivated or processed, but which dispensary serves only to acquire, possess, transfer, transport, sell, distribute, dispense or administer processed marijuana for medical use, related products and supplies and educational materials to Qualified Patients or Qualified Caregivers, and which dispensary includes no cultivation or processing of such marijuana or related products.

Parking Space – an area available for parking one automobile and having not less than one hundred sixty-six and one-half (166.5) square feet, exclusive of driveways and approaches thereto, a free and unimpeded access to a way over unobstructed driveways or approaches and a minimum width of not less than nine (9) feet.

Personal Fitness Service Establishment – A commercial facility all the business of which involves instructional and/or directed exercise and fitness activities, including, but not limited to, personal training, yoga, spinning, pilates, exercise and fitness classes and lessons, and related activities; having at least one instructor or supervisor for every 15 clients; a maximum class size of 15 clients; a maximum occupancy at any one time of 20 persons; and a maximum total area of 2,500 square feet. Such establishments are operated as a business, even if open only to members and their guests on a membership basis and not to the public at large paying a daily admission fee. All facilities must be contained within the building.

Pharmacy – A facility for the sale of prescription and/or non-prescription drugs, medications, and medical supplies.

Premises – a lot together with all buildings, structures and uses thereon.

Professional – a person who by education and experience is a member of a recognized profession such as a physician, dentist, architect, attorney, artist or engineer.

Public Utility – any person, firm, corporation or municipal department, board or commission authorized to furnish gas, steam, electric, waste disposal, communication facility, transportation or water to the public.

Residential Hospice House – a single-family detached dwelling, in which care is given to terminally ill patients who have medically documented prognoses of less than six months to live.

Hospice services given in a residential hospice house under these By-Laws, must be provided by a non-profit, tax exempt, Massachusetts corporation, that holds a license as a hospice care program from the Department of Public Health of the Commonwealth of Massachusetts, pursuant to G.L., Chapter 111, s.57D and 105 CMR s.141.000.

Retaining Wall - A wall or terraced combination of walls used at a grade change to hold soil and other earth material at a higher position. Retaining walls may be attached to or independent from other structures. The exposed side of a retaining wall shall be known as a “face”. The area between a lower wall and a successive higher wall shall be known as a “terrace.

Setback – front, side and rear – the minimum horizontal distance from a street line or a lot line, as the case may be, to any part of a building or structure, including overhang but not: (i) uncovered steps, fences or awnings; (ii) in a required front yard width, an uncovered landing, above a stair or stairs, which neither exceeds a total area of fifty (50) square feet nor projects more than five (5) feet from the face of a building; and (iii) in a required side or rear yard, an uncovered landing, above a stair or stairs, which neither exceeds a total area of twenty-five (25) square feet nor projects more than four (4) feet from the face of a building, where such landing is required by the State Building Code. Notwithstanding the above, in the Business, Chestnut Street Business, Center Business, Avery Square Business, Neighborhood Business, Highland Commercial-128, Elder Services and Hillside Avenue Business districts, the following exemptions shall apply: (i) eaves, cornices, friezes, and architraves shall not be regarded in the computation of the setback to the extent that they do not intrude into the setback area by more than one and one-half (1.5) feet, are a minimum of twelve (12) feet above the mean grade level at the façade on which the encroachment occurs, and have a cumulative area of not more than ten (10) percent of the wall area of the façade on which the encroachment occurs; and (ii) pilasters and columns shall not be regarded in the computation of the setback to the extent that they do not intrude into the setback area by more than one-half (.5) foot, are ornamental and non-structural in nature, and have a cumulative width of not more than five (5) percent of the length of the façade on which the encroachment occurs. In measuring the required setback from any street line, the applicable minimum front setback requirement shall be used.

Story – that part of a building between any floor, other than a basement, and the floor or roof next above.

Half-Story or ½ Story – For all single-family detached dwellings and two-family detached dwellings located in all Districts, and apartment and multi-family dwelling units permitted by Special Permit in the Center Business District and Chestnut Street Business District and located in the half-story directly above the second floor, that portion of a building included between the upper surface of a floor and the lower surface of a sloping roof next above where the area contained therein has a finished ceiling height exceeding 5’-0”. Dormers installed in a sloping roof directly above the second story of a structure shall be limited in size as follows: (1) The total length of the front wall(s) of a dormer(s) shall not exceed fifty percent (50%) of the eave length of the portion of the roof in which the dormer is built. In no case shall a single dormer exceed twenty feet (20’) in width. (2) A roof line overhang shall be continued between the dormer and the story next below so as to avoid the appearance of an uninterrupted wall plane extending beyond two stories. (3) The vertical plane of the side wall of any dormer shall not be closer than eighteen inches (18”) from the

vertical plane of the intersection of the roof and the main building end wall nearest the dormer. (4) No dormer may project above the main ridgeline of the building. There are no restrictions on dormers installed in a sloping roof directly above the first story of a structure. This definition shall apply to all single-family detached dwellings, two-family detached dwellings, and apartment and multi-family dwelling units permitted by Special Permit in the Center Business District and Chestnut Street Business District and located in the half-story directly above the second floor. For all other buildings the definition is, that part of a building under a sloping roof where the full-length rafters rest on the top beam of the story below.

Street or Way – any public way or any private way shown on a plan approved under the provisions of the Subdivision Control Law or in existence when the provisions of said Subdivision Control Law became effective in the Town of Needham, having in the opinion of the Planning Board suitable width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of land abutting thereon or served thereby and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

Structure – anything constructed or erected, the use of which requires a fixed location on the ground or attached to something located on the ground including an artificial or a constructed swimming pool having a depth of water of two (2) feet or more or a water surface area of at least one hundred (100) square feet when filled to capacity, but excluding a fence, boundary wall, retaining wall, public utility pole, public utility supporting device or a structure with less than one hundred square foot ground coverage and a height of less than eight (8) feet.

Telecommunications facility – facility for the operation, monitoring and maintenance of telecommunications switching equipment, data storage computers, internet connectivity routers, and ancillary equipment.

Toxic or Hazardous Materials – all liquid hydrocarbon products including, but not limited to, gasoline, fuel and diesel oil, and also any other toxic caustic or corrosive chemicals, radioactive materials or other substance controlled as being toxic or hazardous by the Division of Hazardous Waste under the provisions of Chapter 21 (c), G.L.

Traffic Mitigation Fund – a fund to be established in the office of the Town Treasurer to be held in a separate account to be administered and operated in accordance with the provisions of Chapter 200 of the Acts of 2001.

Trailer – a vehicle without motive power, designed to be and capable of being towed, including, but not limited to, a utility trailer, boat trailer, tent trailer and mobile home.

Uninterrupted Facade Length – As may be required by certain sections of this by-law, the term “uninterrupted facade length” shall mean the maximum horizontal length of a building facade, uninterrupted by a wall plane projection or recess having a depth of at least 3% of the length of the facade and extending at least 20% of the length of the facade.

1.4 Non-Conformance

1.4.1 Intent

The intent of this section is to define the application of this By-Law to otherwise lawful buildings, structures and uses which do not conform to its provisions; to prevent the expansion or change thereof except in conformity with the provisions of this section; and to provide for the discontinuance of said uses or for their eventual conversion to a conforming status.

1.4.2 Continuation

Any building or structure, or use of a building, structure or land which lawfully existed at the time of the adoption of this By-Law, or any amendment thereof, may be continued to the same extent except as otherwise provided herein.

1.4.3 Change

A non-conforming use shall not be changed other than to conforming use except as hereinafter set forth, and once so changed, shall not be permitted to revert to a non-conforming use.

1.4.4 Restoration

A lawful pre-existing non-conforming building or structure which has been damaged or destroyed by fire or other accidental cause may be rebuilt in the same location and to the dimensions not exceeding those that existed prior to the damage or destruction.

1.4.5 Abandonment

A non-conforming use of any building, structure or land which has been abandoned shall not thereafter be returned to that non-conforming use or converted to any other non-conforming use. A non-conforming use shall be considered abandoned:

- (a) when the intent to discontinue the use is stated by the owner or occupant, or is otherwise manifest or;
- (b) when the use has been discontinued or the stock-in-trade, equipment or furnishings characteristic of the use have been removed from the premises, for twenty-four consecutive months; or
- (c) when the non-conforming use has been replaced by a conforming use; or,

- (d) when the non-conforming use has been changed to another non-conforming use under a special permit granted by the Board of Appeals.

1.4.6 Alteration

Except as otherwise provided in Section 1.4.7, a lawful pre-existing non-conforming use may be changed or extended and a non-conforming building may be structurally altered, enlarged or reconstructed only pursuant to a special permit issued by the Board of Appeals pursuant to Section 7.5.2. No such permit shall be issued except in accordance with the requirements of Section 7.5.2 nor unless the Board shall determine that such change, extension, alteration, enlargement or reconstruction would not be substantially more detrimental to the neighborhood than using the existing non-conforming use or structure. The issuance of a special permit hereunder shall not authorize the violation of any dimensional, parking or intensity regulation with which the structure or use was theretofore in conformity.

1.4.7 Single-Family and Two-Family Dwellings

1.4.7.1 Reconstruction

A lawful pre-existing non-conforming two-family detached dwelling located in a zoning district where two-family detached dwellings are prohibited constitutes a non-conforming use and may not be reconstructed except pursuant to Section 1.4.7.4. As used in Section 1.4.7 the term “reconstruction” shall be defined as the voluntary razing and rebuilding of a building or structure.

1.4.7.2 Alteration of Single-Family and Two-Family Dwellings

A lawful pre-existing non-conforming single-family or two-family dwelling which is non-conforming because of front, side and rear setback, build factor, area and/or frontage requirements of this By-Law may be altered, extended or structurally changed (but not reconstructed) as of right and without a special permit or finding by the Board as required in the preceding section provided that such alteration, extension or structural change complies with all front, side and rear setback, lot coverage, building height, and building story requirements of the current By-Law including but not limited to the provisions of Section 4.2.3 of this By-Law. Such alteration, extension or structural change shall not be considered an increase in the non-conforming nature of the dwelling. For purposes of this section, the extension of an exterior wall within a required setback area shall be deemed to create a new non-conformity and shall require the grant of a variance by the Board of Appeals.

1.4.7.3 Reconstruction of Single-Family and Two-Family Dwellings Located in a Zoning District Where the Use is Permitted

A lawful pre-existing non-conforming single-family or two-family dwelling which is non-conforming because of front, side and rear setback, build factor, area and/or frontage requirements

of this By-Law may be reconstructed as a matter of right and without a special permit or finding by the Board as required in the preceding section provided that the new building is built in compliance with all front, side and rear setback, lot coverage, building height, and building story requirements of the current By-Law including but not limited to the provisions of Section 4.2.3 of this By-Law.

1.4.7.4 Reconstruction of Two-Family Dwellings Located in a Single Residence A, Single Residence B or Rural Residence-Conservation District Where the Use is Prohibited

A lawful pre-existing non-conforming two-family dwelling located in a Single Residence A, Single Residence B or Rural Residence-Conservation District may be reconstructed as a matter of right and without a special permit or finding by the Board as required in the preceding section provided i) the building is rebuilt in the same location and in the same footprint as that which existed prior to the demolition up to the height limit of the current By-Law provided further, however, that any footprint that is violative of the side setback requirement shall not be increased as to height or story beyond that of the existing building absent a Special Permit from the Board of Appeals, or ii) the building is rebuilt in a different location on the lot in compliance with all front, side and rear setback, lot coverage, building height, and building story requirements of the current By-Law including but not limited to the provisions of Section 4.2.3 of this By-Law, and provided that the building as reconstructed has a footprint no greater in area than that of the original non-conforming building.

As used in this Section 1.4.7.4, the term “footprint” shall be defined as the area of the lot which is within the perimeter created by the vertical extension to the ground of the exterior walls of all fully enclosed portions of a building, including attached garages, porches, solariums and similar fully enclosed extensions, attachments and accessory annexes, plus eaves and roof overhangs. Not included in the footprint are unenclosed portions or extensions of buildings, including, but not limited to, unenclosed carports, decks, and porches.

Upon application the Board of Appeals may issue a special permit allowing a lawful pre-existing non-conforming two-family dwelling located in a Single Residence A, Single Residence B or Rural Residence-Conservation District to be reconstructed with a footprint greater in area than that of the original non-conforming building provided the Board of Appeals finds that the reconstructed and enlarged building is appropriate in scale and mass for the neighborhood, with particular consideration of abutting properties, and that the proposed reconstruction and enlargement will not be substantially more detrimental than the existing non-conforming building to the neighborhood, provided further, however, that such reconstruction and enlargement shall not be allowed by special permit in the following circumstances:

(a) Reconstruction of a non-conforming two-family dwelling on a non-conforming lot resulting in a building footprint of greater than 1,800 square feet except as set forth in subsection (c), below;

(b) Reconstruction of a non-conforming two-family dwelling on a conforming lot resulting in a building footprint of greater than 2,500 square feet or lot coverage greater than 18%;

(c) Reconstruction of a non-conforming two-family dwelling on a lot that conforms in all respects other than not meeting the minimum frontage requirement of the By-Law resulting in a building footprint of greater than 2,500 square feet or lot coverage greater than 18%;

(d) Reconstruction of a non-conforming two-family dwelling on a lot where the building as reconstructed would not comply with all front, side, and rear setbacks, lot coverage, building height, and building story requirements of the current By-Law including but not limited to the provisions of Section 4.2.3 of this By-Law; and

(e) Reconstruction of a non-conforming two-family dwelling on a lot resulting in the construction of enclosed garage space servicing more than one car per dwelling unit.

Notwithstanding the provisions of this section to the contrary, the Board of Appeals may allow reconstruction of a non-conforming two-family dwelling on a lot resulting in the construction of enclosed garage space servicing two cars per dwelling unit, provided the Board finds that:

a.i the additional enclosed garage space will be located in an accessory building where the accessory building is separate from and located to the rear of the back wall of the principal structure and where the enclosed garage space authorized under Section 1.4.7.4 (e) is located within the principal structure, or

a.ii. the additional enclosed garage space will be located in a tandem parking space located within the principal structure where such space is accessed through a single garage door and where such garage door shall be a standard single car garage door width; and

b. the additional enclosed garage space will not alter the character of the premises in which it is located, and

c. the additional enclosed garage space will not have a material adverse effect on the value of the land and buildings or structures in the neighborhood, or on the amenities thereof, and

d. the additional enclosed garage space will be appropriate in scale and mass for the neighborhood, taking into consideration the visual impact of the garage from the street.

Notwithstanding the provisions of this section, (1) the enclosed garage space for not more than one car per dwelling unit allowed pursuant to Section 1.4.7.4(e) and (2) the additional (second) enclosed garage space allowed by paragraph "a.i" immediately above and located in an accessory building of not more than 575 square feet per two vehicles, where the accessory building is separate from and not in front of the house, shall be excluded from the lot coverage calculation of Section 1.4.7.4 (a), 1.4.7.4 (b), 1.4.7.4 (c).

1.4.8 Non-Conforming Lots

Notwithstanding any other provision of this By-Law, an increase in the area or frontage of an existing improved lot which includes a conforming structure or building or pre-existing non-

conforming structure or building shall not terminate the status of a structure or building as a pre-existing non-conforming structure if it continues to be non-conforming following such increase in area or frontage.

1.4.9 Conformance with Subsequent Amendments

Construction or operations under a building or special permit shall conform to any subsequent amendment of this By-Law unless the use or construction is commenced within a period of not more than six months after the issuance of the permit and in cases involving construction, unless such construction is continued through completion as continuously and expeditiously as is reasonable.

1.4.10 Substitution

The Board of Appeals may grant a special permit for the replacement of a non-conforming use of a building, structure or land by another specified use not conforming to this By-Law, provided the replacement is less objectionable and detrimental to the neighborhood or any property in the neighborhood.

1.5 Variation

Where this By-Law imposes a greater restriction upon the use of buildings or premises than is imposed by existing provisions of law or other by-laws, the provisions of the By-Law shall control. Where a provision of this By-Law may be in conflict with any other provision or provisions of this By-Law, the more stringent or greater requirement shall control. More particularly, if a lot is located in more than one zoning district, the minimum area, frontage and all other dimensional requirements of the district in which fifty (50) percent or more of the lot is located shall apply throughout.