

7.8.2. Nonconforming Buildings, Structures, or Uses

A. Special Permit Not Required.

1. A special permit is not required from the City Council for nonconforming buildings or structures in the following cases:
 - a. Alteration, reconstruction, extension or structural change to a single- or two-family residential structure which does not increase the nonconforming nature of the structure, and no such increase shall be deemed to have occurred solely because the lot area or the lot frontage, or both, are nonconforming, and no such increase shall be deemed to have occurred solely because the lot area per unit is nonconforming unless the number of units increases;
 - b. Alteration, reconstruction, structural change, but not an extension or enlargement of a nonconforming building or structure for a use permitted as of right, in a Business, Mixed Use, Manufacturing or Limited Manufacturing district;
 - c. Additional outdoor sidewalk and parking space seats permitted under Revised Ordinances Chapter 12, Section 12-70 shall not be considered an increase in the nonconformity nor constitute an extension of use of a lawful nonconforming restaurant in any district; and
 - d. Alteration, reconstruction, extension or structural change to a nonconforming nonresidential building or structure, which does not increase the nonconforming dimensional nature of said building or structure, for conversion of the building or structure to a use permitted as of right in any residential district.
 - e. A special permit is not required from the City Council for change in use to a use permitted as of right, in a Business, Mixed Use, Manufacturing or Limited Manufacturing district.

B. De Minimis Relief.

1. Regardless of whether there are increases in the nonconforming nature of a structure, the City Council deems that the following changes to lawfully nonconforming structures are de minimis and that these changes are not substantially more detrimental to the neighborhood pursuant to M.G.L. Chapter 40A, Section 6. The following alterations, enlargements, reconstruction or extensions to a lawful nonconforming building or structure used for residential purposes may be allowed in accordance with the procedures set forth below; provided that:
 - a. Relief is limited to that portion or portions of the building or structure which is presently dimensionally nonconforming;
 - b. The resulting changes on the nonconforming side will be no closer than 5 feet to the side or rear property line;
 - c. The resulting distance to the nearest residence at the side where the proposed construction will take place is equal to or greater than the sum of the required setbacks of the 2 adjacent lots; [except for second story additions of 400 square feet or less, located entirely within the existing building footprint;](#)
 - d. The resulting construction will meet all building and fire safety codes; and
 - e. The de minimis relief provided in this paragraph shall not apply to buildings in which the nonconformity is due solely to FAR requirements, nor shall it

Docket #375-24 Requesting to allow certain routine residential alterations by right

be used to increase the FAR beyond that shown in Sec. 3.1., [except enclosing an existing porch up to 400 square feet.](#)

2. In accordance with Sec. 7.8.2.B.1, the following de ~~minimis~~^{minimus} alterations are allowed:
 - a. Dormers that do not extend above the height of the existing roof peak and do not add more than 400 square feet of floor area;
 - b. Decks or deck additions or porches less than 200 square feet in size; Sec. 7.8. Nonconformities | Article 7. Administration 7-22 Chapter 30: Zoning Ordinance | Newton, Massachusetts
 - c. First floor additions in the side and rear setbacks which do not total more than 200 square feet in size;
 - d. Second floor additions which do not total more than 400 square feet in size;
 - e. Enclosing an existing porch of any size;
 - f. Bay windows in the side and rear setbacks which are cantilevered and do not have foundations;
 - g. Bay windows which protrude no more than 3 feet into the front setback and are no less than 5 feet from the alteration to the lot line;
 - h. Alterations to the front of the structure if within the existing footprint; and
 - [i. Alterations and additions to the front of a structure of not more than 75 square feet in size, so long as the alteration, addition, reconstruction or extension does not encroach any farther into the front setback.](#)
 - [j. Renovations and additions to a nonconforming two-family building where the proposed construction meets the dimensional standards for a single-family, detached building in that zoning district.](#)

C. Special Permit Required.

1. A special permit from the City Council shall be required for any alteration, reconstruction, extension or structural change of such building or structure to provide for its use in a substantially different manner or greater extent than the existing use, except as provided above in paragraph A. above.
2. A nonconforming building or structure may be structurally or substantially altered or reconstructed or may be altered or enlarged to permit the extension of a nonconforming use, and a nonconforming use may be extended in an existing building or structure or enlargement thereof, or may be introduced into a new building as a part of a nonconforming establishment existing on December 27, 1922, and a nonconforming use may be changed to another nonconforming use; provided that a special permit is obtained. In granting such a permit, the City Council shall make a finding that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood and shall impose such conditions as may be necessary to protect the neighborhood from injury. As used in this Paragraph, the word “establishment” shall include buildings, structures and lands.

D. Standards.

1. **Nonconforming Buildings or Structures.** Whenever nonconforming buildings or structures do not require a special permit, all otherwise applicable regulatory provisions of this Chapter, as amended, specifically including but not limited to Sec. 5.1 shall apply.
2. **Minimum Dimensions.** Whenever the operation of this Sec. 7.8.2 would reduce the area available for building a dwelling house upon any lot in a residence district to

Approved Zoning (De Minimis)

Docket #375-24 Requesting to allow certain routine residential alterations by right

less than 20 feet in its shortest dimension, or less than 800 square feet in total area, the requirements of this Sec. 7.8.2 shall be modified so far as necessary to provide such minimum dimension and total area by reducing the minimum distance of such dwelling house from rear lot and street lines, first from rear lot lines, but to not less than 7½ feet, and second, if necessary, from street lines, but to not less than 15 feet.

3. **Replacing 3-Story Residential Structures.** Any residential structure that is replacing a previously existing 3-story residential structure shall be allowed 3 stories, but only insofar as the absolute height does not exceed that of the previously existing structure.

(Rev. Ords. 1973; Ord. No. 284, 06/19/78; Ord. No. S-260, 08/03/87; Ord. No. T-115, 11/19/90; Ord. No. T-313, 12/6/93; Ord. No. T-314, 12/6/93; Ord. No. V-113, 04/23/97; Ord. No. W-51, 07/09/01; Ord. No. X-39, 12/02/02; Ord. No. Z-51, 08/10/09; Ord. No. Z-77, 02/22/11; Ord. No. A-13, 03/18/13; Ord. No. A-99, 01/17/17, Ord. No. C-25, 2/21/23)