

## **SECTION 1. GENERAL**

### **1.1 Title and Authority**

This By-Law shall be known and may be cited as the "Zoning By-Law of the Town of Belmont, Massachusetts" and is adopted in accordance with and pursuant to the provisions of Massachusetts General Law, Chapter 40A, as amended by Chapter 808 of the Acts of 1975 as amended.

### **1.2 Purposes**

The purposes of this By-Law include, but are not limited to, the following:

- to lessen congestion in the streets;
- to conserve health;
- to secure safety from fire, flood, panic and other dangers;
- to provide adequate light and air;
- to prevent overcrowding of land;
- to avoid undue concentration of population;
- to encourage water supply, drainage, sewerage, schools, parks, open space and other public requirements;
- to conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment;
- to encourage the most appropriate use of land throughout the Town, including consideration of the recommendations of the comprehensive plan, if any, adopted by the Planning Board and the comprehensive plan, if any, of the regional planning agency; and
- to preserve and increase amenities by the promulgation of regulations to fulfill these purposes under the provisions of Massachusetts General Law, Chapter 40A.

Regulations adopted pursuant to these purposes may include, but are not limited to, restricting, prohibiting, permitting or regulating the use, alteration, height, area and location of buildings and structures and the use of premises in the Town of Belmont.

### **1.3 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 Belmont shall be in conformity with the provisions of this By-Law, with the following exceptions:

- certain nonconforming buildings, as provided in Section 1.5;
- certain aspects of agricultural, educational, and religious uses, as provided in Massachusetts General Law, Chapter 40A, Section 3.

Any use not specifically or generically enumerated in a district herein shall be deemed prohibited.

## 1.4 Definitions and Abbreviations

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.

**Accessory Building** - A building devoted exclusively to an accessory use as herein defined, and not attached to a principal building by any roofed structure.

**Accessory Dwelling Unit** – A dwelling unit which is incidental to the use of the principal structure on the same lot and located in a Historic Accessory Building pursuant to a Special Permit issued under Section 6.11 of this By-Law.

*Note: §1.4 was amended by Article 32 at the 2009 Annual Town Meeting.*

**Accessory Use** - An activity incidental to and located on the same premises as a principal use conducted by the same person or his agent. No use (other than parking) shall be considered “accessory” unless functionally dependent on and occupying less land area than the principal use, except for institutional (religious or educational uses) parking lots used by others, with owner’s consent, not conducting business within such institution.

*Note: §1.4 was amended by Article 30 at the 2009 Annual Town Meeting.*

**Apartment House** - A dwelling containing no fewer than five dwelling units.

**Arterial Street** - Any State-numbered highway, any other street segment with right-of-way width of 60 feet or more, and the following named streets:

Belmont Street	Leonard Street
Blanchard Road	Lexington Street
Bright Road	Mill Street
Brighton Street (east of Pleasant Street)	Trapelo Road
Cross Street	Winter Street
Lake Street	

**Basement** - A portion of a building partially underground, but having less than 60% of its clear height below grade (see cellar).

*Note: §1.4 was amended by Article 18 at the 2005 Annual Town Meeting.*

**Block** - An area of land of one or more lots, bounded by streets or ways, but with no streets or ways within the area.

**Building** - A roofed structure enclosing useful space.

**Catering Service** - An establishment that prepares, serves, and supplies food in large quantities to be delivered and consumed off premises. Deliveries of food products occur on a regular basis.

*Note: §1.4 was amended by Article 9 at the 2003 Special Town Meeting.*

**Cellar** - A portion of a building partially underground, having 60% or more of its clear height below grade (see basement).

*Note: §1.4 was amended by Article 18 at the 2005 Annual Town Meeting.*

**Child Care, Large Family** - A private residence which, on a regular basis, receives for temporary custody and care during part or all of the day, children under seven years of age or children under 16 years of age if such children have special needs, and receives for temporary custody and care for a limited number of hours, children of school age in accordance with regulations promulgated by the Office of Child Care Services; provided however, that the number of children under the age of sixteen in a large family child care home shall not exceed ten, including participating children living in the residence. A large family child care home shall have at least one additional approved care giver present when the total number of children participating in such child care exceeds six. Large family child care shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation therefor.

*Note: §1.4 was amended by Article 5 at the 1999 Second Special Town Meeting.*

**CMR** - Code of Massachusetts Regulations.

**Commercial Vehicle** - A vehicle that has ladders, tools, stock or supplies, lettering or advertising that covers an area greater than 18 by 24 inches on either side visible from the outside, or any vehicle with a GVW of 10,000 lbs. or more. Use of a tarpaulin or like cover shall not exempt a vehicle from this definition.

*Note: §1.4 was amended by Article 26 at the 2001 Annual Town Meeting.*

**Day Care Center** - Any facility operated on a regular basis whether known as a day nursery, nursery school, kindergarten, child play school, progressive school, child development center, or preschool, or known under any other name, which receives children not of common parentage under seven years of age, or under 16 years of age if such children have special needs, for nonresidential custody and care during part or all of the day separate from their parents. Day care center shall not include: any part of a public school system; any part of a private, organized educational system unless the services of such system are primarily limited to kindergarten, nursery or related preschool services; a Sunday School conducted by a religious institution; a facility operated by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services; a family day care home; an informal cooperative arrangement among neighbors or relatives; or the occasional care of children with or without compensation therefore provided, in the last two instances, such arrangement or care shall not be for more than five children including participating children living in the residence.

**DEP** - Massachusetts Department of Environmental Protection.

*Note: §1.4 was amended by Article 26 at the 1995 Annual Town Meeting.*

**Development** - Any man-made change to improved or unimproved real estate, including but not limited to buildings or structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

**Driveway, Shared** – A driveway shared by adjacent property owners and privately owned and maintained.

*Note: §1.4 was amended by Article 11 at the 2014 Annual Town Meeting.*

**Dwelling** - A building containing one or more dwelling units separated by side yards from any other structure or structures except accessory buildings.

**Dwelling, Single-Family** – A single residential building designed for occupancy by one family.

*Note: §1.4 was amended by Article 14 at the 2014 Annual Town Meeting.*

**Dwelling, Two-Family** – A single residential building designed for occupancy by two families:

- **Traditional, Two-Family (Horizontal Style)** –
  - Each unit is completely separated by a common horizontal element (i.e., interior floor-ceiling assembly), and
  - At least 75% of one dwelling unit must be directly above or below the other, or
- **Duplex (Vertical Style)** –
  - A structure containing two dwelling units that share a common vertical wall and roof, and
  - Each unit has direct access to the outside.

*Note: §1.4 was amended by Article 14 at the 2014 Annual Town Meeting.*

**Dwelling Unit** - A building or portion of a building intended as living quarters for a single family, having a single set of kitchen facilities (a stove plus either or both refrigerator and sink) not shared with any other unit; or quarters for up to five persons in a dormitory, congregate dwelling, or similar group dwelling.

**EPA** - U.S. Environmental Protection Agency.

**Facade-Mounted Wireless Telecommunications Facility** - A Wireless Telecommunications Facility, other than a Roof-Mounted Wireless Telecommunications Facility, mounted on, erected on or supported in whole or in part by an existing building or structure, occupied or used primarily for purposes other than wireless telecommunication.

*Note: §1.4 was amended by Article 25 at the 1998 Annual Town Meeting.*

**Family** - One or more persons, including domestic employees, occupying a dwelling unit and living as a single nonprofit housekeeping unit; provided that if five or more persons of the group occupying said dwelling are not kindred to each other, as defined by civil law, they shall not be deemed to constitute a family.

**Family Day Care Home** - Any private residence which, on a regular basis, receives for temporary custody and care during part or all of the day, children under seven years of age or children under 16 years of age if such children have special needs; provided however, in either case, that the total number of children under 16 in a family day care home shall not exceed six, including participating children living in the residence. Family day care home shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation therefor.

**Floodplain** - The area of land susceptible to flooding or inundation from a particular body of water, including a pond, a river or a stream during a Base Flood.

**Floor Area, Gross** - The sum of the horizontal areas of the several floors of all buildings on the same lot, measured from the exterior face of exterior walls, including basements and any interior parking and loading areas, but not including cellars or areas having less than six feet floor-to-ceiling height.

**Floor Area Ratio** - The ratio of gross floor area to lot area of the premises. In determining gross floor area for these purposes only, any building area having floor-to-ceiling height in excess of 15 feet shall be counted twice.

**Freestanding Wireless Telecommunications Facility** - A Wireless Telecommunications Facility mounted on, erected on or supported by any freestanding monopole, lattice tower, or similar freestanding structure.

*Note: §1.4 was amended by Article 25 at the 1998 Annual Town Meeting.*

**G.L.** - Massachusetts General Law.

**Grade** - The average of the ground level adjoining the building at all exterior walls based upon the existing contour lines. Contour lines shall be illustrated on a plan and shall be established prior to any filling or earth moving/removal activities. The grade shall not be raised more than 12 inches to allow for proper drainage.

*Note: §1.4 was amended by Article 6 at the 2016 Annual Town Meeting.  
§1.4 was amended by Article 18 at the 2005 Annual Town Meeting.*

**Ground Floor** - The floor which is nearest to the average grade of the sidewalk or ground adjoining the building.

**Height, Building** - The vertical distance from the grade to:

- the highest point of the roof or parapet for flat or shed roofs;
- the midpoint between the lowest and highest points of the roof for gable, hip and gambrel roofs (upper roof pitch 4" per foot or greater); or
- the point of change in roof slope for mansard roofs (upper roof pitch under 4" per foot).

*Note: §1.4 was amended by Article 28 at the 2006 Annual Town Meeting.  
§1.4 was amended by Article 18 at the 2005 Annual Town Meeting.  
§1.4 was amended by Article 31 at the 1991 Annual Town Meeting.*

**Kennel** - A pack or collection of dogs on a single premise, including a commercial boarding or training kennel, commercial breeder kennel, domestic charitable corporation kennel, personal kennel or veterinary kennel.

*Note: §1.4 was amended by Article 9 at the 2014 Annual Town Meeting.*

**Kennel, Commercial Boarding or Training** - An establishment used for boarding, holding, day care, overnight stays or training of animals that are not the property of the owner of the establishment, at which such services are rendered in exchange for consideration and in the absence of the owner of any such animal; provided, however, that "commercial boarding or training kennel" shall not include an animal shelter or animal control facility, a pet shop licensed under Section 39A of Chapter 129, a grooming facility operated solely for the purpose of grooming and not for overnight boarding or an individual who temporarily, and not in the normal course of business, boards or cares for animals owned by others.

*Note: §1.4 was amended by Article 9 at the 2014 Annual Town Meeting.*

**Kennel, Commercial Breeder** – An establishment, other than a personal kennel, engaged in the business of breeding animals for sale or exchange to wholesalers, brokers or pet shops in return for consideration.

*Note: §1.4 was amended by Article 9 at the 2014 Annual Town Meeting.*

**Kennel, Domestic Charitable Corporation** – A facility operated, owned or maintained by a domestic charitable corporation registered with the Department of Agricultural Resources or an animal welfare society or other nonprofit organization incorporated for the purpose of providing for and promoting the welfare, protection and humane treatment of animals, including a veterinary hospital or clinic operated by a licensed veterinarian, which operates consistent with such purposes while providing veterinary treatment and care.

*Note: §1.4 was amended by Article 9 at the 2014 Annual Town Meeting.*

**Kennel, Personal** – A pack or collection of more than 4 but no greater than 8 dogs, 3 months old or older, owned or kept under single ownership, for private personal use; provided, however, that breeding of personally owned dogs may take place for the purpose of improving, exhibiting or showing the breed or for use in legal sporting activity or for other personal reasons; provided further, that selling, trading, bartering or distributing such breeding from a personal kennel shall be to other breeders or individuals by private sale only and not to wholesalers, brokers or pet shops; provided further, that a personal kennel shall not sell, trade, barter or distribute a dog not bred from its personally-owned dog; and provided further, that dogs temporarily housed at a personal kennel, in conjunction with an animal shelter or rescue registered with the Department of Agricultural Resources, may be sold, traded, bartered or distributed if the transfer is not for profit.

*Note: §1.4 was amended by Article 9 at the 2014 Annual Town Meeting.*

**Kennel, Veterinary** – A veterinary hospital or clinic that boards dogs for reasons in addition to medical treatment or care; provided, however, that "veterinary kennel" shall not include a hospital or clinic used solely to house dogs that have undergone veterinary treatment or observation or will do so only for the period of time necessary to accomplish that veterinary care.

*Note: §1.4 was amended by Article 9 at the 2014 Annual Town Meeting.*

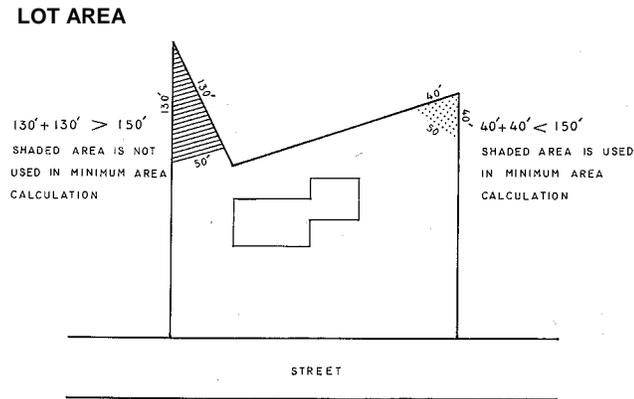
**Interior Wireless Telecommunications Facility** - A Wireless Telecommunications Facility mounted inside, erected inside or supported entirely within an existing building or structure, occupied or used primarily for other purposes, and not visible from any public way or adjoining property.

*Note: §1.4 was amended by Article 25 at the 1998 Annual Town Meeting.*

**Lodging and Boarding** - Rental of not more than three rooms without separate cooking facilities, as an accessory use within a dwelling, if not resulting in more than four unrelated persons being accommodated on the premises.

**Lot** - The whole area of a single parcel of land under one ownership. Whenever such a parcel is divided on a plan which has been placed on file at the Middlesex South District Registry of Deeds at Cambridge, the term lot as used in this By-Law shall mean a lot as shown on such plan.

**Lot Area** - The horizontal area of a lot exclusive of any area in a street or recorded way open to public use. At least 90% of the lot area required for compliance shall also be exclusive of areas subject to protection under the Wetlands Protection Act, Section 40, Chapter 131, Massachusetts General Law, for reasons other than being subject to flooding. If the distance between any two points on lot lines is less than 50 feet, as measured in a straight line, the smaller portion of the lot as divided by that line shall not be included in lot area unless the two points are separated by less than 150 feet measured along lot lines.



**Lot Coverage** - Percentage of total lot area covered by structures or roofed.

**Lot Frontage** - The boundary of a lot on land coinciding with a street line if there are both rights of access and potential vehicular access across that boundary to a potential building site. Measured continuously along one street line between side lot lines. In the case of corner lots, measured on the street designated by the owner or, failing that, by the Building Inspector as the frontage street, between the side lot line and the midpoint of the corner radius.

**Motor Vehicle Service Station** - Premises devoted primarily to retail sale of fuels and lubricants and/or washing of motor vehicles, with any repair services or other sales or services of secondary importance.

**NPDES** - National Pollution Discharge Elimination System.

**Open Space** - An open area on a lot, unbuilt on, containing landscape materials, pedestrian walks, patios, recreational facilities, but excluding driveways and parking spaces.

**Other Retail Sales and Services** - An establishment primarily engaged in the retail sale of goods, services and/or products (including baked products, ice cream, and/or candy for consumption off site with no seating provided on site). Such uses may include incidental food service.

*Note: §1.4 was amended by Article 9 at the 2003 Special Town Meeting.*

**Outdoor Seasonal Seating** – Outdoor seating that is provided on a seasonal basis in an area contiguous to a restaurant to which the seating is associated.

*Note: §1.4 was amended by Article 25 at the 2010 Annual Town Meeting.*

**Parking Space** - An area in a building or on a lot available for parking one automobile, exclusive of passageways and driveways appurtenant thereto, and having free and unimpeded access to a street over unobstructed passageways or driveways.

**Patio** - A paved recreational area, not elevated above adjacent existing grade, separated by plant material or structures from all driveways and not itself to be used for parking.

*Note: §1.4 was amended by Article 19 at the 2000 Annual Town Meeting.*

**Premises** - A lot together with all structures, buildings, and uses thereon and including any water bodies and watercourses or parts thereof.

**Registered Marijuana Dispensary** (or "RMD") - also known as a Medical Marijuana Treatment Center, means a not-for-profit entity properly registered with the Massachusetts Department of Public Health under 105 CMR 725.100, 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 registered qualifying patients or their personal caregivers.

*Note: §1.4 was amended by Article 12 at the 2014 Annual Town Meeting.*

**Restaurant** - An establishment at which the principal activity is the preparation, service, and sales of food for consumption on the premises.

*Note: §1.4 was amended by Article 9 at the 2003 Special Town Meeting.*

**Restaurant, Fast Food** - An establishment whose primary business is the sale of food for consumption on the premises which is: (a) primarily intended for immediate consumption rather than for use as an ingredient or component of meals; (b) available upon a short waiting time; (c) packaged or presented in such a manner that it can be readily eaten outside the premises where it is sold; (d) which, because of the nature of the operation sells large volumes of food; but not including drive-up windows.

*Note: §1.4 was amended by Article 9 at the 2003 Special Town Meeting.*

**Restaurant, Take Out** - An establishment whose primary business is the sale of food for consumption off the premises which is: (a) primarily intended for immediate consumption rather than for use as an ingredient or component of meals; (b) available upon a short waiting time; (c) packaged or presented in such a manner that it can be readily eaten outside the premises where it is sold; (d) which, because of the nature of the operation sells large volumes of food; (e) commonly generates a large volume of vehicular traffic, but not including drive-up windows.

*Note: §1.4 was amended by Article 9 at the 2003 Special Town Meeting.*

**Roof-Mounted Wireless Telecommunications Facility** - A Wireless Telecommunications Facility mounted on, erected on or supported in whole or in part by the roof of an existing building or structure, occupied or used primarily for purposes other than wireless telecommunication.

*Note: §1.4 was amended by Article 25 at the 1998 Annual Town Meeting.*

**Satellite Antenna** - A device or instrument, other than a Wireless Telecommunications Facility, for the transmittal or reception of television or other electronic communications.

*Note: §1.4 was amended by Article 26 at the 1998 Annual Town Meeting.  
§1.4 was amended by Article 24 at the 1996 Annual Town Meeting.*

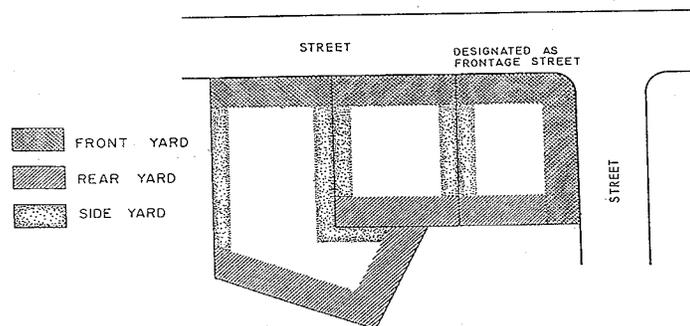
**School-Aged Child Care Home** - Any private residence which, on a regular basis, receives for temporary custody and care during part or all of the day, school-aged children, when such children are not required to attend school; provided, however, that the total number of children in a school-aged child care home during the portion of the year when school is in session shall not exceed eight, and during the summer months when school is not in session shall not exceed six, including in each case participating children living in the residence. School-aged child care home shall not mean a private residence used for informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation therefor. The phrase 'school-aged children' shall mean children age 7 and older, not to exceed 14 years of age; however, special needs children shall qualify if not more than 16 years of age.

*Note: §1.4 was amended by Article 39 at the 1994 Annual Town Meeting.*

**Setback** - An area open to the sky, located between a street or other property line and any structure or element thereof other than a fence, wall, or other customary yard accessory. Setback is measured perpendicular to the street or property line.

*Note: §1.4 was amended by Article 28 at the 2006 Annual Town Meeting.*

SETBACK



**Setback, Front** - A setback taken from a street line. Typically, corner and through lots must provide two front setbacks.

**Setback, Rear** - A setback taken from a rear property line, that is, typically a line or set of lines approximately parallel to the street frontage, and separating lots whose frontage is established on different streets. Setbacks on irregularly shaped lots where "side" versus "rear" is indeterminate shall be construed as rear setbacks.

**Setback, Side** - A setback taken from a side property line, typically a line or set of lines which intersect a street line, separating lots whose frontage is established on the same street. Corner lots commonly have one side setback and one rear setback.

**Sign** - Any device designed to inform or attract the attention of persons not on the premises on which the device is located, including any building surfaces other than windows which are internally illuminated or decorated with gaseous tube or other lights. The following, however, shall not be considered signs within the context of this By-Law:

- a) flags and insignia of any government except when displayed in connection with commercial promotion;
- b) legal notices, or informational signs erected or required by government bodies;
- c) temporary signs inside display windows, covering not more than 50% of window area, illuminated by building illumination only;
- d) standard gasoline pumps bearing thereon in usual size and form the name, type, and price of gasoline;
- e) carved or other integral devices identifying the building name or date of erection, but not identifying occupants, and not illuminated; or
- f) on-premises devices not exceeding four square feet, guiding traffic and parking, but bearing no advertising matter.

**Sign, Accessory** - Any sign that advertises, or indicates the person occupying the premises on which the sign is erected or maintained, or the business transacted thereon, or advertises the property itself or any part thereof as for sale or rent, and which contains no other matter. A sign on the exterior of a structure which advertises a product or service on more than 25% of the total area of the sign, which product or service does not constitute at least 25% of the gross sales made on the premises on which the sign is erected or maintained, is not an accessory sign.

**Sign, Area of** -

- a) The area of a sign shall be considered to include all lettering, wording, and accompanying designs and symbols, together with the background on which they are displayed, any frame around the sign and any "cutouts" or extensions, but shall not include any supporting structure or bracing.
- b) The area of a sign consisting of individual letters or symbols attached to or painted on a surface, building, wall or window, shall be considered to be that of the smallest quadrangle or triangle which encompasses all of the letters and symbols.
- c) The area of a sign consisting of a three-dimensional object shall be considered to be the area of the largest vertical cross section of that object.
- d) In computing the area of signs, both sides of V-shaped signs, but only one side of back-to-back signs, shall be counted.

**Sign, Non-Accessory** - Any sign not an accessory sign.

**Sign, Standing** - Any accessory sign that is not attached to a building.

**Sign, Window** – A sign posted, painted, placed or affixed in or on a window exposed to public view and is visible from the exterior of the building or a sign that is located within three feet of the glass of a window exposed to public view and visible from the exterior of the building.

*Note: §1.4 was amended by Article 24 at the 2008 Annual Town Meeting.*

**Sign, Temporary** - Any sign, including its supporting structure, intended to be maintained for a continuous period of not more than 100 days in any calendar year.

**Special Permit Granting Authority (SPGA)** - The Board specifically designated in this Zoning By-Law to act upon a particular Special Permit. Where no Board is specifically designated herein for a particular Special Permit, the Board of Appeals shall act as the Special Permit Granting Authority.

*Note: §1.4 was amended by Article 28 at the 2006 Annual Town Meeting.*

**Story** - That portion of a building, other than a cellar, included between the upper surface of a floor and upper surface of the floor or roof next above.

**Story, Half** - A space under a sloping roof where:

- a) the line of intersection of the rafter bottoms and the interior wall surface is not more than three feet above floor level on at least half the perimeter of the second floor,
- b) the potential space having headroom of five feet or more is not more than 60% as large as the second floor,
- c) provided that the length of any dormer does not exceed 75% of the length of the roofline of the side of the structure where the dormer is constructed, and
- d) for purposes of this calculation, when the height of the second floor is indeterminate, the height of the second floor (from finished floor to finished ceiling) shall be equal to 12 feet, the remaining portion of the wall shall be factored into the half-story calculation.

*Note: §1.4 was amended by Article 18 at the 2005 Annual Town Meeting.*

*§1.4 was amended by Article 22 at the 1998 Annual Town Meeting.*

**Street** - Either:

- a) a public way or a way which the Town Clerk certifies is maintained and used as a public way, or
- b) a way approved by the Board of Survey, or
- c) a private way that has been and is continually used as a means of vehicular access to the lots fronting on it provided said private way is shown on a subdivision plan recorded prior to September 21, 1988.

*Note: §1.4 was amended by Article 27 at the 1995 Annual Town Meeting.*

**Structure** - Anything constructed or erected, the use of which requires fixed location on the ground, including buildings, mobile homes, signs, swimming pools, and tanks, but for purposes of this By-Law not including walls, fences, or paving.

**Substantial Improvement** - Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either:

- a) before the improvement or repairs is started, or
- b) if the structure has been damaged, and is being restored, before the damage occurred. Substantial Improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term "Substantial Improvement" does not apply to either:

- a) any improvements of a structure to comply with existing State or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or
- b) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

**Swimming Pool** - An artificial receptacle capable of containing a body of water, whether in or above ground, or created by artificial means from a natural watercourse, and all appurtenances, equipment, appliances and other facilities for its operation, maintenance or use, used or intended to be used by the owner or tenant thereof and his/her family and by friends invited to use it without payment of any fee, but not including portable or other pools incapable of containing a depth of water exceeding 24 inches at any point.

**Townhouse** – A one-family dwelling unit, with a private entrance, which is part of a residential structure containing three or more dwelling units that are attached horizontally in a linear arrangement, and having two or three totally exposed walls, depending on the number of units in structure, to be used for access, light, and ventilation.

*Note: §1.4 was amended by Article 14 at the 2014 Annual Town Meeting.*

**Watercourse** - The natural channel of a stream or river through which springs, surface runoffs, and rain waters are carried during normal weather conditions.

**Wetland** - Wet meadows, marshes, swamps, bogs, areas where groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrate for a plant community for at least five months of the year; emergent and submergent plant communities in inland waters; that portion of any bank which touches any inland waters, as defined in DEP Regulations adopted for implementation of the Wetlands Protection Act.

**Window Display** – Any arrangement or presentation of merchandise placed within three feet of a window but not including any pricing, dollar amount or signage intended to augment the display of the merchandise. Signs associated with a window display are considered a window sign for the purposes of this By-Law.

*Note: §1.4 was amended by Article 24 at the 2008 Annual Town Meeting.*

**Wireless Telecommunications Facility** - Any tower, antenna, or appurtenant structure or equipment used to provide wireless telecommunications services to individuals or institutions, but not including an amateur radio facility used in accordance with the terms of any amateur radio service license issued by the U.S. Federal Communications Commission, provided that (1) the facility is not used or licensed for any commercial purpose; and (2) the facility shall be removed upon loss or termination of such license.

*Note: §1.4 was amended by Article 25 at the 1998 Annual Town Meeting.*

## **1.5 Nonconforming Uses and Structures**

*Note: §1.5 was adopted under Article 27 at the 2004 Annual Town Meeting.*

### **1.5.1 Applicability**

This By-Law shall not apply to uses or structures lawfully in existence or lawfully begun, or to a building or Special Permit issued, before the first publication of notice of the public hearing required by G.L. c. 40A, s. 5 at which this By-Law, or any relevant part thereof, was adopted. No modification of a lawfully existing nonconforming use or structure is allowed except as authorized hereunder.

### **1.5.2 Nonconforming Uses**

The Board of Appeals may grant a Special Permit to change or extend a nonconforming use only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood and that it shall be in keeping with the character of the neighborhood in which it is located. The following types of changes to nonconforming uses may be considered by the Board of Appeals:

- a. Change or substantial extension of the use;
- b. Change from one nonconforming use to another, not substantially more detrimental, nonconforming use.

Once a nonconforming use is changed to a conforming use through the exercise of a Building Permit, there is no authority to allow the property to revert to a nonconforming use.

### 1.5.3 Nonconforming Structures

The Building Commissioner may issue a Building Permit for a change in use of a pre-existing, nonconforming structure to any permitted use.

The Building Commissioner may issue a Building Permit for an interior renovation, interior alteration or interior reconstruction of a pre-existing, nonconforming structure that does not extend the nonconformity or create a new nonconformity.

The Board of Appeals may grant a Special Permit to reconstruct, extend, alter, or change a nonconforming structure only if it determines that such reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure or create a new nonconformity and shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood and that it shall be in keeping with the character of the neighborhood in which it is located. The following types of changes to nonconforming structures may be considered by the Board of Appeals:

- a. A reconstruction, extension or structural change;
- b. An alteration to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.

### 1.5.4 Nonconforming Single and Two-Family Residential Structures

#### **A. General Residence Zoning Districts**

In the General Residence Zoning District, as provided in Massachusetts General Law Chapter 40A, Section 6, preexisting non-conforming structures may be extended or altered with a Special Permit by the Planning Board, provided that no such extension or alteration shall be permitted unless there is a finding by the Planning Board that such extension or alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. Notwithstanding the foregoing, dormers that comply with Section 4.2.2, Linear Requirements, shall be allowed without review by the Planning Board. On lots that do not comply with the minimum area requirements of this Zoning By-Law (including the minimum lot area per dwelling unit), preexisting non-conforming single and two-family structures may not be voluntarily demolished and reconstructed except in accordance with a Special Permit issued by the Planning Board under Section 6D of this Zoning By-Law.

*Note: §1.5.4 was amended by Article 14 at the 2014 Annual Town Meeting.*

#### **B. Single Residence C Zoning Districts**

- (1) In the Single Residence C Zoning Districts, a nonconforming single- and two-family residential structure may be reconstructed, extended, altered, or structurally changed upon a determination by the Building Commissioner that such proposed reconstruction, extension, alteration, or structural change does not increase the nonconforming nature of said structure.

The Building Commissioner may issue a Building Permit under any of the following circumstances:

- 1) An alteration to a structure which complies with all current setbacks, open space, lot coverage and building height. This clause shall apply-regardless of whether the lot complies with the current area and/or frontage requirements;
- 2) An alteration to a structure which encroaches upon one or more required setbacks, where the alteration will comply with all current setbacks, open space, lot coverage and building height requirements. This clause shall apply regardless of whether the lot complies with the current area and/or frontage requirements;
- 3) A half-story addition to a nonconforming structure, that will not increase the footprint of the existing structure, create a new dimensional nonconformity or extend an existing dimensional nonconformity, provided that the existing height restrictions shall not be exceeded. This clause shall apply regardless of whether the lot complies with the current area and/or frontage requirements.

If the Building Commissioner determines that the proposed alteration or structural change does not meet any of the clauses listed above, a Special Permit shall be required from the Board of Appeals.

- (2) If the Building Commissioner determines that such proposed alteration or structural change increases the gross floor area of the nonconforming structure by more than thirty percent (30%) either as:
  - a) A standalone application, in and of itself, or
  - b) When combined with the gross floor area added to the structure during the five-year period preceding the date of the pending application

then the proposed alteration or structural changes shall require a Special Permit from the Planning Board.

- (3) A nonconforming single- or two-family structure may be reconstructed after voluntary demolition if the building as reconstructed will be located on the same footprint as the original nonconforming structure, and will be no greater in volume or gross floor area as the original nonconforming structure.

If the Building Commissioner determines that the proposed reconstruction would:

- a. cause the structure to exceed the volume or gross floor area of the original nonconforming structure or
- b. cause the structure to be located other than on the original footprint,

then a Special Permit shall be required from the Planning Board prior to such reconstruction.

- (4) The Planning Board may grant a Special Permit under this Section 1.5.4.B. (2) or (3) if it finds that the enlarged building:
  - a) Is generally in harmony with the neighborhood;

- b) Will neither generate excessive traffic, parking, noise or density impacts on the abutters, nor create other detrimental effects on the neighborhood;
  - c) Is appropriate in scale and mass for the neighborhood, with particular consideration of abutting properties;
  - d) Will not increase the existing nonconforming lot coverage, if it exists; and,
  - e) Will not be substantially more detrimental than the existing nonconforming building to the neighborhood.
- (5) In making any Special Permit decision pursuant to this Section 1.5.4.B. (2) or (3), the Planning Board shall consider the following:
- a) Scale and design of the structure;
  - b) The siting of the structure and driveway;
  - c) Walkway, driveway and parking circulation;
  - d) Exterior lighting;
  - e) Open space and screening; and,
  - f) Drainage.
- (6) For the purposes of this Section 1.5.4.B., a nonconforming single- and two-family structure shall be defined as a single- and two-family structure on a lot that does not comply with the existing minimum lot area and/or frontage requirements and/or the single- and two-family structure encroaches or otherwise does not comply with one or more setbacks, open space, lot coverage or building height requirements.

An application for a Special Permit under this Section 1.5.4.B. shall comply with the procedures and requirements set forth in Section 7.4 of the Zoning By-Law.

*Note: §1.5.4 was amended by Article 6 at the 2016 Annual Town Meeting.*

**C. All Other Districts**

In all other districts, nonconforming single and two-family residential structures may be reconstructed, extended, altered, or structurally changed upon a determination by the Building Commissioner that such proposed reconstruction, extension, alteration, or structural change does not increase the nonconforming nature of said structure. The Building Commissioner may issue a Building Permit under the following circumstances:

- 1) An alteration to a structure which complies with all current setbacks, open space, lot coverage and building height requirements but is located on a lot with insufficient area and/or frontage;
- 2) An alteration to a structure which encroaches upon one or more required setbacks, where the alteration will comply with all current setbacks, open space, lot coverage and building height requirements. This clause shall apply regardless of whether the lot complies with the current area and/or frontage requirements;

- 3) A half-story addition to a nonconforming structure, that will not increase the footprint of the existing structure, create a new dimensional nonconformity or extend an existing dimensional nonconformity, provided that the existing height restrictions shall not be exceeded. This clause shall apply regardless of whether the lot complies with the current area and/or frontage requirements.

#### 1.5.5 Restoration

A structure which has been damaged by fire or other casualty to an extent less than 50% of the fair market value of the structure on the date of the damage may be restored to its original condition and square footage, regardless of any nonconformity of the structure or its use.

A structure damaged to a greater extent, if dimensionally nonconforming or containing a nonconforming use, may be restored to the previous nonconforming configuration or use only provided such work is started within two (2) years of the damage and completed within three (3) years of the date of the damage and where there is no increase in nonconformance with setback requirements. Any proposed change of use is subject to the provisions of this Section 1.5.

#### 1.5.6 Abandonment

A nonconforming use of a structure or land, that has been abandoned or not used for a period of two (2) years, shall not be reestablished and all future use(s) shall conform with this By-Law.

### 1.6 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 this 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 requirements shall control.

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