



Town of Stow
PLANNING BOARD

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November 8, 2005

Legal Notice

The Stow Planning Board will hold a public hearing on December 6, 2005 at 7:30 PM, in the Stow Town Building, on proposed amendments to the Stow Zoning Bylaw by:

- Amending Section 3.9 (*Non-Conforming Uses and Structures*)
- Amending Section 3.8.1.10 (*Erosion Control*)
- Amending Section 6.2 (*Common Driveways*)

A copy of the proposed amendments may be inspected at the Office of the Town Clerk or the Office of the Planning Board.

Stow Planning Board
Bruce E. Fletcher, Chairman

2X Metrowest Daily News, November 22, 2005 and November 29, 2005

11-09-05 - Faxed to Beacon Villager

11-15-05 - Posted in the Office of the Town Clerk and Town Bulletin Board

11-15-05 - Mailed to Department of Housing and Community Development, Metropolitan Area Planning Council, Planning Boards of Abutting Towns

Article 8. Zoning Bylaw Amendment – Erosion Control

To see if the Town will vote to amend the Zoning Bylaw, Section 3.8.1.10, by amending Subsection 3, and adding a new subsection 7, to read in their entirety as stated below in subsections (A) and (B) of this article; or to take any other action relative thereto.

(Planning Board)

(A) - Amend Section 3.8.1.10, Subsection 3 by replacing the words “areas” with the word “area” and the words “two acres” with the words “one acre”, to read in its entirety as stated below:

3. No area totaling one acre or more on any parcel or contiguous parcels in the same ownership shall have existing vegetation clear-stripped or be filled six inches or more so as to destroy existing vegetation unless in conjunction with agricultural activity or unless within STREETS which are either public or designated on an approved subdivision plan or unless a special permit is approved by the Planning Board on the condition that run-off will be controlled, erosion prevented and either a constructed surface or cover vegetation will be provided not later than the first full spring season immediately following completion of the stripping operation. No stripped area or areas which are allowed by special permit shall remain through the winter without temporary cover of winter rye or similar plant material being provided for soil control, except in the case of agricultural activity when such temporary cover would be infeasible.

ANNOTATED VERSION

3. No ~~areas~~ totaling ~~two~~ one ~~acres~~ or more on any parcel or contiguous parcels in the same ownership shall have existing vegetation clear-stripped or be filled six inches or more so as to destroy existing vegetation unless in conjunction with agricultural activity ~~or unless necessarily incidental to construction on the premises under a currently valid building permit~~ or unless within STREETS which are either public or designated on an approved subdivision plan or unless a special permit is approved by the Planning Board on the condition that run-off will be controlled, erosion prevented and either a constructed surface or cover vegetation will be provided not later than the first full spring season immediately following completion of the stripping operation. No stripped area or areas which are allowed by special permit shall remain through the winter without temporary cover of winter rye or similar plant material being provided for soil control, except in the case of agricultural activity when such temporary cover would be infeasible.

(B) - Amend Section 3.8.1.10 by adding a new Subsection 7 to read in its entirety as stated below:

7. Before a project disturbs one acre or more of land, either by itself or as part of a larger development; and storm water could run off the site in a directed manner (via a culvert, ditch, storm sewer system, roadway, storm dug channel, etc) and reach a surface water (pond, stream, wetland, etc.), a copy of the Stormwater Pollution Prevention Plan (SWPP) and the Notice of Intent filed with the Environmental Protection Agency (EPA) under the National Pollutant Discharge Elimination System (NPDES) shall be submitted to the Planning Board.

ANNOTATED VERSION

7. *Before a project disturbs one acre or more of land, either by itself or as part of a larger development; and storm water could run off the site in a directed manner (via a culvert, ditch, storm sewer system, roadway, storm dug channel, etc) and reach a surface water (pond, stream, wetland, etc.), a copy of the Stormwater Pollution Prevention Plan (SWPP) and the Notice of Intent filed with the Environmental Protection Agency (EPA) under the National Pollutant Discharge Elimination System (NPDES) shall be submitted to the Planning Board.*

PLANNING BOARD SUMMARY

Part (A) of this article proposes to change the Special Permit requirement for areas greater than “two acres” cleared of vegetation to areas greater than “one acre” cleared of vegetation, consistent with the Federal requirement for a National Pollutant Discharge Elimination System (NPDES) permit.

Part (B) of this article proposes to require submission of a copy of the Stormwater Pollution Prevention Plan and Notice of Intent filed with the EPA under the NPDES permit to the Planning Board.

Article 9. Zoning Bylaw Amendment – Common Drives

To see if the Town will vote to amend the Zoning Bylaw by amending Section 6.2 by adding a new Subsection 6.2.7 to read in its entirety as stated below; or to take any other action relative thereto.
(Planning Board)

- 6.2.7 As part of an approved subdivision or special permit granted by the Planning Board, the number of LOTs served by a common drive may be increased to five (5).

ANNOTATED VERSION

- 6.2.7 As part of an approved subdivision or special permit granted by the Planning Board, the number of LOTs served by a common drive may be increased to five (5).**

PLANNING BOARD SUMMARY

The Planning Board believes that the use of common drives should be promoted rather than discouraged. This proposed amendment will increase the number of lots, from 3 to 5, allowed to be served by a common, thereby reducing the number parallel single drives that might otherwise be required, and reducing impervious surface area and site disturbance.

Article 10. Zoning Bylaw Amendment – Non-conforming Uses and Structures

To see if the Town will vote to amend the Zoning Bylaw by DELETING the first paragraph of Section 3.9 and the entirety of Section 3.9.1 as currently written and SUBSTITUTING NEW SECTION 3.9 and SECTION 3.9.1 and ADDING NEW SECTIONS 3.9.6 and 3.9.7 as follows:

(Planning Board)

3.9 NON-CONFORMING USES AND STRUCTURES

- 3.9.1 A pre-existing NON-CONFORMING USE or STRUCTURE may continue. However, other than Wireless Service Facilities, which may not be altered or extended unless specifically allowed in Section 3.11 of the Bylaw, no lawful pre-existing NON-CONFORMING USES or STRUCTURES may be extended or altered except in conformance with Sections 3.9.6 and 3.9.7 below. All applications for extensions and/or alterations shall include a scaled floor plan of the STRUCTURE(S) in question showing FLOOR AREA and ground coverage prior to and following the proposed changes in order to determine the degree to which the use has expanded from its original size. All applications for such special permits shall include such information and plans as required for a special permit as required in Section 9.2. Applicants shall also comply with the following site planning standards for “NON-CONFORMING USES or STRUCTURES”:

- 3.9.1.1 (Unchanged)
- 3.9.1.2 (Unchanged)
- 3.9.1.3 (Unchanged)
- 3.9.1.4 (Unchanged)
- 3.9.1.5 (Unchanged)
- 3.9.1.6 (Unchanged)

- 3.9.2 (Unchanged)
- 3.9.3 (Unchanged)
- 3.9.4 (Unchanged)
- 3.9.5 (Unchanged)

3.9.6 Changes of Use and Limitation on Intensity and Size of Use - Other Than Single or Two-Family Residential Dwellings:

- 3.9.6.1 As provided in G. L. c. 40A, sec. 6, a lawfully preexisting nonconforming use and/or structure, other than a single or two-family residential dwelling, may be reconstructed, altered or extended only if:
 - 1. said reconstruction, alteration or extension itself conforms with all the provisions of the Zoning Bylaw;
 - 2. there is a finding by the Board of Appeals that such reconstruction, alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use;
 - 3. that said extension, alteration or change is in accordance with the guidelines noted below; and
 - 4. that the Board of Appeals grants a special permit as provided in Section 9.2.
- 3.9.6.2 Guidelines for Review of Extensions, Alterations or Changes to Preexisting, Nonconforming Uses and Structures: Recognizing the need to provide guidelines for determining relative impacts upon the Town and the immediate neighborhood from an expansion, alteration or change of preexisting nonconforming uses and structures, and recognizing the basis and consistent principles of zoning with respect to minimizing nonconforming uses and structures, the following shall apply to the review of special permit applications under this Section:
 - 1. the Board of Appeals shall encourage extensions, alterations or changes to nonconforming structures and uses toward greater, if not complete, conformance with the provisions of the Zoning Bylaw and to reduce the degree of nonconformity;
 - 2. the Board of Appeals shall not encourage the expansion of a nonconforming structure or use as measured by either the:
 - a) amount of floor space or land area used, or
 - b) volume of activity, including but not limited to an increase in the intensity of use and/or a change in the nature or purpose of the use;
 - 3. the Board of Appeals shall prohibit the expansion of nonconforming structures and uses unless there will be no demonstrable adverse impacts on abutting properties and those properties that generally characterize the neighborhood or locus within which the expansion is sought, and;

4. the Board of Appeals shall not encourage the expansion of nonconforming structures and uses if the expansion will negatively impact the Town of Stow's ground or surface waterbodies.

3.9.6.3 Table of Presumptively Not More Detrimental Extensions, Alterations, or Changes to Preexisting, Nonconforming Uses and Structures:

An extension, alteration or change to a lawfully preexisting nonconforming use or structure shall be presumed not to be substantially more detrimental to the neighborhood if the guidelines of Section 3.9.6.2 are considered and if the extension, alteration or change also is in compliance with the following:

TABLE OF PRESUMPTIVELY NOT MORE DETRIMENTAL EXTENSIONS, ALTERATIONS, OR CHANGES TO OTHER THAN SINGLE OR TWO-FAMILY RESIDENTIAL DWELLINGS

Issue	Presumptively Allowable Changes, Alterations, or Extensions
If maximum floor area ratio requirements are exceeded and/or minimum open space requirements are not met.	The extension, alteration, or change does not: 1) increase the floor area ratio requirements; 2) decrease the existing floor area ratio and/or; 3) results in an increase of the open space requirements of Section 4.4.
If the structure or use exceeds current parking or loading area requirements.	The requirements of Section 7 of the Zoning Bylaw are met or if the Board of Appeals determines that the existing use and proposed expansion or site conditions do not warrant the number of parking spaces required by Section 7.3.3.
If the structure or use exceeds, or is in violation of, or violates any other provision of the Zoning Bylaw.	The extension, alteration, or change meets the guidelines specified in Section 3.9.6.2 above.

3.9.7 Alteration, Reconstruction, Extension or Structural Changes to Preexisting Nonconforming Single and Two-Family Residential Structures.

3.9.7.1 As provided for in G. L. c. 40A sec. 6, a nonconforming single or two-family dwelling or structure accessory thereto may be altered, reconstructed, extended or otherwise structurally changed provided that:

1. the proposed alteration, extension or structural change itself conforms to the requirements of the present Bylaw, and does not intensify any existing non-conformities or result in any additional non-conformities, in which event the Building Inspector may issue a building permit and an application to the Board of Appeals need not be made; or
2. the proposed alteration, extension or structural change itself does not conform to the requirements of the present Bylaw, and does intensify existing non-conformities or results in additional non-conformities, in which event a Petition for Special Permit must be made to the Board of Appeals, and the Board of Appeals must find that:

- a) there is no substantial increase in the nonconforming nature of said structure; and
- b) such reconstruction, alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use.

3.9.7.2 In determining the meaning of the phrases “increase the nonconforming nature of said structure” and “substantially more detrimental to the neighborhood,” the following shall apply to the review of applications subject to this provision to alter, reconstruct extend or structurally change a preexisting nonconforming single- or two-family residential structure:

1. The Board of Appeals must make a determination as to the particular respect or respects in which the existing structure or lot does not conform to the requirements of the present Bylaw;
2. Should the Board of Appeals conclude that the proposed change would substantially increase the nonconforming nature of the structure or lot, the applicant will not be entitled to the issuance of a special permit;
3. If the Board of Appeals determines, that the proposal will not substantially increase the nonconforming nature of the structure or the lot, the applicant will also be required to show that the change will not be substantially more detrimental than the existing nonconforming structure or use to the neighborhood;
4. If the Board of Appeals determines that the proposal will be more substantially detrimental to the neighborhood, the special permit sought will be denied unless the Board of Appeals determines that a special permit can be approved with conditions that would make the change substantially not more detrimental, in which case the Board of Appeals may approve a special permit with such conditions.
5. For the purposes of this Section, determination of “substantially more detrimental to the neighborhood” shall include consideration of and impacts to, the general and immediate neighborhood from the resulting height, building coverage, impervious coverage, and width of the altered, reconstructed, extended or structurally changed structure. Additionally, a determination whether an altered, reconstructed, extended or structurally changed structure will be “substantially more detrimental to the neighborhood” shall include the resulting impacts to views and vistas from abutting properties and public and private ways, increase in traffic, noise, surface water runoff and related site planning issues.

ANNOTATED VERSION

3.9 NON-CONFORMING USES and STRUCTURES

~~*A pre-existing, NON-CONFORMING USE or STRUCTURE may continue. However:*~~

- 3.9.1 **A pre-existing NON-CONFORMING USE or STRUCTURE may continue. However,** ~~Other than Wireless Service Facilities, which may not be altered or extended unless specifically allowed in Section 3.11 of the Bylaw, no **lawful** pre-existing, NON-CONFORMING USES or STRUCTURES may be extended or altered except **in conformance with Sections 3.9.6 and 3.9.7 below.** **upon application for a special permit and a finding by the Board of Appeals that such change is not substantially more detrimental to the neighborhood than the existing non-conforming use.** **The extent of the NON-CONFORMING USE of a STRUCTURE may be increased up to one hundred (100) percent of the FLOOR AREA and the extent of the NON-CONFORMING USE of the land may be increased up to twenty-five (25) percent of the ground area. These limits may be further extended upon special permit granted by the Board of Appeals.** All applications for extensions and/or alterations shall~~

include a scaled floor plan of the STRUCTURE(S) in question showing FLOOR AREA and ground coverage prior to and following the proposed changes in order to determine the degree to which the use has expanded from its original size. All applications for such special permits shall include such information and plans as required for a special permit as required in Section 9.2. Applicants shall also comply with the following site planning standards for "NON-CONFORMING USES or STRUCTURES":

- 3.9.1.1 It shall comply with the parking requirements of the Parking Section of this Bylaw, except as superseded by 3.9.1.4., 3.9.1.5. and 3.9.1.6. below;*
- 3.9.1.2 It shall comply with the SIGN section of this Bylaw;*
- 3.9.1.3 It shall comply with the General Use Regulations section of this Bylaw;*
- 3.9.1.4 No parking, BUILDING or outdoor storage facility of materials or products shall be closer than 35 feet from the side or rear LOT line, nor closer than 50 feet from the STREET LINE;*
- 3.9.1.5 Parking and outdoor storage of materials or products shall be screened from the view of abutting properties and the view from public ways by vegetative screens, opaque fencing or topography; and*
- 3.9.1.6 There shall be sufficient space and provision on site for the maneuvering of vehicles so as to allow loading and unloading of materials and products without impeding the flow of traffic along public ways or blocking pedestrian sidewalks, paths and rights of way.*
- 3.9.2 If said NON-CONFORMING USE has been changed to a more restricted use, it shall not again be changed to a less restricted use.*
- 3.9.3 If the NON-CONFORMING USE is discontinued or abandoned for a period of two (2) years or more, it shall not be re-established except upon a special permit granted by the Board of Appeals.*
- 3.9.4 A non-conforming single or two-family DWELLING or agricultural STRUCTURE which has been damaged or removed may be rebuilt or restored at the same location and again used as previously, provided that the owner shall start operations for restoring and rebuilding on said premises within twelve (12) months after such damage or removal and reconstruction is completed and occupancy begun within two (2) years of start of restoration except upon a special permit for a longer period of time granted by the Board of Appeals.*
- 3.9.5 An amendment to the Zoning Bylaw shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing on such bylaw required by Section 5, but shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the non-conforming nature of said structure. In cases involving construction, such construction shall be carried through to completion continuously and expeditiously. If such construction has ceased for a period of two or more years, it shall be considered abandoned, and exemptions from zoning bylaw amendments shall cease to apply.*
- 3.9.6 Changes of Use and Limitation on Intensity and Size of Use - Other Than Single or Two-Family Residential Dwellings:*

3.9.6.1 As provided in G. L. c. 40A, sec. 6, a lawfully preexisting nonconforming use and/or structure, other than a single or two-family residential dwelling, may be reconstructed, altered or extended only if:

1. said reconstruction, alteration or extension itself conforms with all the provisions of the Zoning Bylaw;
2. there is a finding by the Board of Appeals that such reconstruction, alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use;
3. that said extension, alteration or change is in accordance with the guidelines noted below; and
4. that the Board of Appeals grants a special permit as provided in Section 9.2.

3.9.6.2 Guidelines for Review of Extensions, Alterations or Changes to Preexisting, Nonconforming Uses and Structures: Recognizing the need to provide guidelines for determining relative impacts upon the Town and the immediate neighborhood from an expansion, alteration or change of preexisting nonconforming uses and structures, and recognizing the basis and consistent principles of zoning with respect to minimizing nonconforming uses and structures, the following shall apply to the review of special permit applications under this Section:

1. the Board of Appeals shall encourage extensions, alterations or changes to nonconforming structures and uses toward greater, if not complete, conformance with the provisions of the Zoning Bylaw and to reduce the degree of nonconformity;
2. the Board of Appeals shall not encourage the expansion of a nonconforming structure or use as measured by either the:
 - a) amount of floor space or land area used, or
 - b) volume of activity, including but not limited to an increase in the intensity of use and/or a change in the nature or purpose of the use;
3. the Board of Appeals shall prohibit the expansion of nonconforming structures and uses unless there will be no demonstrable adverse impacts on abutting properties and those properties that generally characterize the neighborhood or locus within which the expansion is sought, and;
4. the Board of Appeals shall not encourage the expansion of nonconforming structures and uses if the expansion will negatively impact the Town of Stow's ground or surface waterbodies.

3.9.6.3 Table of Presumptively Not More Detrimental Extensions, Alterations, or Changes to Preexisting, Nonconforming Uses and Structures:

An extension, alteration or change to a lawfully preexisting nonconforming use or structure shall be presumed not to be substantially more detrimental to the neighborhood if the guidelines of Section 3.9.6.2 are considered and if the extension, alteration or change also is in compliance with the following:

TABLE OF PRESUMPTIVELY NOT MORE DETRIMENTAL EXTENSIONS,
ALTERATIONS, OR CHANGES TO OTHER THAN SINGLE OR TWO-FAMILY
RESIDENTIAL DWELLINGS

<u>Issue</u>	<u>Presumptively Allowable Changes, Alterations, or Extensions</u>
<u>If maximum floor area ratio requirements are exceeded and/or minimum open space requirements are not met.</u>	<u>The extension, alteration, or change does not:</u> 4) <u>increase the floor area ratio requirements;</u> 5) <u>decrease the existing floor area ratio and/or;</u> 6) <u>results in an increase of the open space requirements of Section 4.4.</u>
<u>If the structure or use exceeds current parking or loading area requirements.</u>	<u>The requirements of Section 7 of the Zoning Bylaw are met or if the Board of Appeals determines that the existing use and proposed expansion or site conditions do not warrant the number of parking spaces required by Section 7.3.3.</u>
<u>If the structure or use exceeds, or is in violation of, or violates any other provision of the Zoning Bylaw.</u>	<u>The extension, alteration, or change meets the guidelines specified in Section 3.9.6.2 above.</u>

3.9.7 Alteration, Reconstruction, Extension or Structural Changes to Preexisting Nonconforming Single and Two-Family Residential Structures.

3.9.7.1 As provided for in G. L. c. 40A sec. 6, a nonconforming single or two-family dwelling or structure accessory thereto may be altered, reconstructed, extended or otherwise structurally changed provided that:

1. the proposed alteration, extension or structural change itself conforms to the requirements of the present Bylaw, and does not intensify any existing non-conformities or result in any additional non-conformities, in which event the Building Inspector may issue a building permit and an application to the Board of Appeals need not be made; or
2. the proposed alteration, extension or structural change itself does not conform to the requirements of the present Bylaw, and does intensify existing non-conformities or results in additional non-conformities, in which event a Petition for Special Permit must be made to the Board of Appeals, and the Board of Appeals must find that:
 - a) there is no substantial increase in the nonconforming nature of said structure; and
 - b) such reconstruction, alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use.

3.9.7.2 In determining the meaning of the phrases “increase the nonconforming nature of said structure” and “substantially more detrimental to the neighborhood,” the following shall apply to the review of applications subject to this provision to alter, reconstruct extend or structurally change a preexisting nonconforming single- or two-family residential structure:

1. The Board of Appeals must make a determination as to the particular respect or respects in which the existing structure or lot does not conform to the requirements of the present Bylaw;

2. Should the Board of Appeals conclude that the proposed change would substantially increase the nonconforming nature of the structure or lot, the applicant will not be entitled to the issuance of a special permit;
3. If the Board of Appeals determines, that the proposal will not substantially increase the nonconforming nature of the structure or the lot, the applicant will also be required to show that the change will not be substantially more detrimental than the existing nonconforming structure or use to the neighborhood;
4. If the Board of Appeals determines that the proposal will be more substantially detrimental to the neighborhood, the special permit sought will be denied unless the Board of Appeals determines that a special permit can be approved with conditions that would make the change substantially not more detrimental, in which case the Board of Appeals may approve a special permit with such conditions.
5. For the purposes of this Section, determination of “substantially more detrimental to the neighborhood” shall include consideration of and impacts to, the general and immediate neighborhood from the resulting height, building coverage, impervious coverage, and width of the altered, reconstructed, extended or structurally changed structure. Additionally, a determination whether an altered, reconstructed, extended or structurally changed structure will be “substantially more detrimental to the neighborhood” shall include the resulting impacts to views and vistas from abutting properties and public and private ways, increase in traffic, noise, surface water runoff and related site planning issues.

PLANNING BOARD SUMMARY

This article proposes to authorize the Building Inspector to issue a Building Permit, without the need for a Special Permit, for Lawful Preexisting Nonconforming Single or Two-Family Residential Structures, if a proposed alteration, extension or structural change conforms to the requirements of the present Bylaw and does not intensify any existing non-conformities or result in any additional non-conformities. This article also proposes to define guidelines for the Zoning Board of Appeals to consider in Special Permit Review of Extensions, Alterations or Changes to Preexisting, Nonconforming Uses and Structures, and to determine the meaning of the phrases “increase the nonconforming nature of said structure” and “substantially more detrimental to the neighborhood,”