

**ARTICLE ZH (2012ATM) #**  
(Two-thirds vote)

**AMEND ZONING BYLAW – NONCONFORMING LOTS**

To see if the Town will vote to amend the Zoning Bylaw by deleting Sections 8.1 (Nonconforming Lots) and 8.3.6 (Structures on Nonconforming Lots) and replacing them with a new Section 8.1 as follows:

**8.1 Nonconforming Lots**

- 8.1.1 Continuation of Existing LOT – The requirements of Section 6 of “The Zoning Act” Chapter 40A of the General Laws, as amended, shall apply.
- 8.1.2 Changes to Unimproved LOTS – Any unimproved LOT which complied with the minimum area, FRONTAGE, LOT width, yard and depth requirements, if any, in effect at the time the boundaries of the LOT were defined by recorded deed or plan, may be built upon for single FAMILY, or where permitted two-FAMILY, residential USE, notwithstanding the adoption of new or increased LOT area, FRONTAGE, LOT width, yard or depth requirements, provided that:
  - 8.1.2.1 At the time of the adoption of such new or increased requirements such LOT was held, and has continued to be held, in ownership separate from that of adjoining land; and
  - 8.1.2.2 The LOT had at least 5,000 square feet of area and 50 feet of FRONTAGE at the time the boundaries of the LOT were defined; and
  - 8.1.2.3 Any proposed STRUCTURE is situated on an unimproved LOT so as to conform with the minimum yard requirements, if any, in effect at the time the boundaries of such LOT were defined. In the case where no minimum yard requirements were in effect at the time the boundaries of such LOT were defined, the minimum front yard shall be 20 feet and the minimum side and rear yards shall be 10 feet.
- 8.1.3 Replacement of Single- and Two-Family Dwellings on a Nonconforming Lot – A STRUCTURE in single family residential USE on a nonconforming LOT may be razed and rebuilt for single family residential USE; and a STRUCTURE in two-family residential USE on a nonconforming LOT may be razed and rebuilt for two-family residential USE; in both cases subject to the following conditions and limitations:
  - 8.1.3.1 The replacement STRUCTURE shall not exceed the FLOOR AREA RATIO on the LOT of the STRUCTURE that existed on the LOT before it was razed or damaged.
  - 8.1.3.2 The replacement STRUCTURE shall meet all minimum yard and maximum height requirements of this Bylaw.
  - 8.1.3.3 In the absence of architectural and plot plans for the existing structure to be razed, the FLOOR AREA RATIO shall be determined by using the information on record at the Town of Acton Assessor’s office.
  - 8.1.3.4 Additions to the replacement STRUCTURE may be made after two years following the date of initial occupancy of the replacement STRUCTURE, if

otherwise permissible and subject to any permits and special permits that may be required.

- 8.1.4 Extension of Single- and Two-Family Dwellings on a Nonconforming Lot – The extension, alteration or change to a single or two-family residential STRUCTURE on a nonconforming LOT shall be deemed not to increase any nonconformity and shall not require a special permit under Section 8.1.5, provided that such extension, alteration or change increases the GROSS FLOOR AREA that exists in the STRUCTURE on April 1, 2012 by not more than 15 percent and complies with all applicable yard requirements.
- 8.1.5 In all other cases, the Board of Appeals may, by special permit, allow such reconstruction, extension, alteration or change to a single or two-family residential STRUCTURE on a nonconforming LOT where it determines either that the proposed modification does not increase the nonconformity or, if the proposed modification does increase the nonconformity, it will not be substantially more detrimental to the neighborhood than the existing STRUCTURE on the nonconforming LOT.

*[Note Sections 8.1 and 8.3.6 currently read:*

**8.1 Nonconforming LOTS** - Any LOT which complied with the minimum area, FRONTAGE, LOT width, yard and depth requirements, if any, in effect at the time the boundaries of the LOT were defined by recorded deed or plan, may be built upon or used for single FAMILY, or where permitted two-FAMILY, residential USE, notwithstanding the adoption of new or increased LOT area, FRONTAGE, LOT width, yard or depth requirements, provided that:

8.1.1 At the time of the adoption of such new or increased requirements such LOT was held, and has continued to be held, in ownership separate from that of adjoining land; and

8.1.2 The LOT had at least 5,000 square feet of area and 50 feet of FRONTAGE at the time the boundaries of the LOT were defined; and

8.1.3 Any proposed STRUCTURE is situated on an unimproved LOT so as to conform with the minimum yard requirements, if any, in effect at the time the boundaries of such LOT were defined. In the case where no minimum yard requirements were in effect at the time the boundaries of such LOT were defined, the minimum front yard shall be 20 feet and the minimum side and rear yards shall be 10 feet.

### **8.3 Nonconforming STRUCTURES**

8.3.6 Replacement of Single- and Two-Family Dwellings – A STRUCTURE in single family residential USE on a nonconforming LOT, that cannot otherwise be built on under the requirements of Section 8.1, may be razed and rebuilt for single family residential USE, or rebuilt for single family residential USE after damage from fire or natural disaster except flood, regardless of the degree of damage; and a STRUCTURE in two-family residential USE on a nonconforming LOT, that cannot otherwise be built on under the requirements of Section 8.1, may be razed and rebuilt for two-family residential USE, or rebuilt for two-family residential USE after damage from fire or natural disaster except flood, regardless of the degree of damage; in both cases subject to the following conditions and limitations:

8.3.6.1 The replacement STRUCTURE shall not exceed the FLOOR AREA RATIO on the LOT of the STRUCTURE that existed on the LOT before it was razed or damaged.

8.3.6.2 The replacement STRUCTURE shall meet all minimum yard and maximum height requirements of this Bylaw.

8.3.6.3 In the absence of architectural and plot plans for the existing structure to be razed, the FLOOR AREA RATIO shall be determined by using the information on record at the Town of Acton Assessor's office.

8.3.6.4 Additions to the replacement STRUCTURE may be made after two years following the date of initial occupancy of the replacement STRUCTURE, if otherwise permissible and subject to any permits and special permits that may be required.]

, or take any other action relative thereto.

## SUMMARY

This article attempts to clarify a notoriously confusing area of zoning law – nonconforming lots. By way of background, the Acton ZBL provisions governing nonconforming uses, structures and lots must comply with Chapter 40A, Section 6, which provides (in relevant part):

Except as hereinafter provided, **a zoning ordinance or by-law** 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 ordinance or by-law required by section five, 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 nonconforming nature of said structure**. Pre-existing nonconforming structures or uses may be extended or altered, provided, that **no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood**. This section shall not apply to establishments which display live nudity for their patrons, as defined in section nine A, adult bookstores, adult motion picture theaters, adult paraphernalia shops, or adult video stores subject to the provisions of section nine A. (Emphasis added).

Under the current Acton ZBL, Section 8.1 governs changes to unimproved nonconforming lots and Section 8.3.6 governs rebuilding of structures on nonconforming lots after voluntary demolition. The interpretation of these two sections, however, has been mired in confusion due to the fact that:

- Section 8.1 does not explicitly limit its application to unimproved lots, as opposed to nonconforming lots with existing structures;
- The placement of Section 8.3.6 is under the “Nonconforming Structures” section of the Acton ZBL, rather than the “Nonconforming Lots” section;
- The absence of a section in the Acton ZBL governing changes to single or two-family residences on nonconforming lots that are not complete demolitions, although such changes are permitted within the parameters of G.L. Chapter 40A, Section 6; and
- It is not clear when and how the Acton Zoning Board of Appeals should apply Chapter 40A, Section 6 to proposed changes on nonconforming lots.

Section 8.3.6 was adopted at the 2007 Annual Town Meeting to allow for the intentional demolition and rebuilding of single or two-family homes on nonconforming lots by right, provided that the replacement is (at least initially) not larger than the original structure. This was Acton’s attempt to control so-called “mansionization”, at least on nonconforming lots. This type of local zoning control has been blessed by the Supreme Judicial Court in *Bjorkland v. Zoning Board of Appeals of Norwell*, 450 Mass. 357, 363 (2008). *Bjorkland* involved the proposed reconstruction of a single family home on a nonconforming lot, where the proposed reconstruction complied with all dimensional requirements, except the prior nonconforming lot

size, which did not change. The *Bjorkland* Court held that building a larger structure, although compliant with current zoning, “increase[s] the nonconforming nature of the structure,” requiring a determination under Chapter 40A, Section 6 that such nonconformity is not substantially more detrimental to the neighborhood. Over the last 5 years, the Acton Zoning Board of Appeals has repeatedly been asked to interpret Section 8.3.6 in the context of reconstruction of or changes to structures on nonconforming lots that comply with all current dimensional regulations and do not change the nonconforming aspect of the property (*i.e.* lot size or configuration). In doing so, it has been unclear how to apply Section 8.3.6 in conjunction with the mandates of Chapter 40A, Section 6.

This article attempts to resolve the confusion by amending Section 8.1 (Nonconforming Lots) to:

1. Make the current provisions of Section 8.1 explicitly govern only unimproved lots.
2. Move Section 8.3.6 within the heading of “Nonconforming Lots” under Section 8.1.
3. Remove any reference to voluntary demolition with as a result of fire or natural disaster, where that distinction is unnecessary. Demolitions due to fire or natural disaster are treated the same as voluntary demolitions and reconstructions under the Acton ZBL. This removal is not intended to result in a change in rights with respect to demolitions under those circumstances.
4. Add a default provision that permits changes to structures on nonconforming lots where it has been determined by the Acton Zoning Board of Appeals that the proposal is entitled to relief under Chapter 40A, Section 6.
5. Bring Section 8.1 in conformance with the other sections in the Acton ZBL dealing with nonconformity by making explicit that such lots are permitted to persist according to Chapter 40A, Section 6.

Direct inquiries to: Roland Bartl, Planning Director: [planning@acton-ma.gov](mailto:planning@acton-ma.gov) / (978) 264-9636  
Selectman assigned:

**Board of Selectmen:**  
**Finance Committee:**  
**Planning Board:**