

TOWN OF HINGHAM
BUILDING DEPARTMENT

Michael J. Clancy, C.B.O.
Building Commissioner
Zoning Enforcement Officer

March 24, 2023

Mr. Benedict D. Wilcox
36 North Street
Hingham, MA 02043

Re: 58 Main Street, Hingham

Dear Mr. Wilcox:

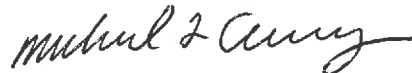
On March 23, 2023, I issued my response to your letter of March 3, 2023, and I have no further response. The decision set forth in my March 23, 2023 letter may be appealed within thirty days of March 23, 2023, in accordance with MGL Chapter 40A, Section 15.

In your email you also assert a right to reconstruction pursuant to Section III-I.1 (iii) (A) [sic] of the Zoning By-Law. Section III-I.1.d (iii) (A) applies only to existing structures. This is supported by the legislative intent of the Section set forth in the Comment to Warrant Article 33 of the Hingham 2020 Annual Town Meeting (copy enclosed) which states:

Finally, this amendment is not intended to permit an abandoned or discontinued nonconforming Single-Family and Two-Family Dwelling to be demolished and reconstructed at a later date. The use of the term "reconstruction" is intended to allow demolition and reconstruction as one continuous process, not two separate processes separated by an extended period of time.

This letter responds to the specific assertions raised in your correspondence and does not in any way limit any additional basis under applicable law in support of my determination concerning 58 Main Street.

Sincerely,



Michael J. Clancy C.B.O.
Building Commissioner/
Zoning Enforcement Officer

C; Select Board, Town Administrators, Planning, Zoning, Historic, Town Counsel

TOWN OF HINGHAM



WARRANT for the **ANNUAL TOWN MEETING**

June 20, 2020 at 2:00 P.M.
(Rain Date: June 21, 2020 at 2:00 P.M.)

Hingham High School Multi-Purpose Athletic Field, Hingham, MA
17 Union Street

and

REPORTS
of the

Advisory Committee
Capital Outlay Committee
Planning Board

Board of Selectmen
Personnel Board
School Committee

Please bring this report to the meeting for use in the proceedings

March 10, 1941, as heretofore amended as follows:

Item 1: By amending Section III-G.4.c.iii by replacing the clause “prevent umbrellas from become flying projectiles” with “prevent umbrellas from becoming flying projectiles”;

Item 2: By amending Section III-G.6.b.ii to replace “street level story” with “ground floor”;

Item 3: By amending Section III-G.6.c.i to replace the existing text in its entirety with: “A commercial use shall be located at the ground floor facing the street(s) on which the parcel has frontage or facing the Station Street parking lot. The commercial use must occupy not less than 65% of the linear width of the structure facing the street and must comprise not less than 55% of the area of the ground floor of the structure; provided, however, that the Board of Appeals may approve a lesser percentage of linear width or area of the ground floor (but not less than 40%) upon making the following findings:

(x) with respect to parking (A) the Planning Board has made a determination pursuant to a Special Permit A3 as to the minimum required on-site parking for such site and (B) the reduction in required commercial use along the linear frontage or within the area of the ground floor of the structure is necessary for satisfying such parking determination; and

(y) such reduction in commercial use along the linear frontage or within the area of the ground floor of the structure is consistent with Section III-G.1 and 2, and is not detrimental to the streetscape along which the structure is located.”;

Item 4: By amending Section III-G.6.c.ii to insert the following language at the start of the section: “Dwelling units shall be located above the ground floor. No dwelling units shall be permitted below the ground floor. In the event of a building with multiple ground floors due to topography the residential use may occur at different elevations in the same building but shall always be above the respective ground floors as long as the percentages are consistent with Section III-G.6.c.i.”;

Item 5: By amending Section III-G.7.a.vi. to replace “ground level” with “ground floor”; and

Item 6: By replacing the definition of “Commercial/Residential Building” with the following: “A building containing commercial uses on the ground floor and a dwelling unit or dwelling unit(s) above the ground floor. A Commercial/Residential Building may also contain commercial uses above the ground floor, but in no event shall residential uses be permitted on or below the ground floor, except as expressly provided in this By-law.”

ARTICLE 33: Will the Town amend the Zoning By-Law of the Town of Hingham, adopted March 10, 1941, as heretofore amended, as follows:

Item 1: Amend Section III-I.1.D.(i) by replacing the reference to “Single-Family or Two-Family residential use” where it appears in parentheses with “Single-Family Dwelling or Two-Family Dwelling”;

Item 2: Replace Section III-I.1.D.(iii)a. in its entirety as follows: “This subsection (iii) shall not apply to and shall not prohibit the conforming use of a building or structure that would be a lawful nonconforming building or structure if it had not been deemed discontinued or abandoned hereunder as a Single-Family Dwelling or a Two-Family Dwelling, provided, however, that any alteration, reconstruction, addition, extension, or structural change to the building or structure shall (i) maintain or improve the dimensional conditions that were once nonconforming until abandoned or discontinued and (ii) any addition or extension to the building or structure conforms to the applicable height and yard dimensions under Section IV-A.” and

Item 3: Insert after Section III-I.1.D.(iii)b. the following: “Nonconforming conditions reestablished pursuant to the above exceptions shall no longer be considered nonconforming once a building permit or special permit has issued.”

or act on anything related thereto?

(Inserted at the request of the Zoning Board of Appeals)

COMMENT: This Article seeks to amend the Hingham Zoning By-law with respect to the abandonment or discontinuance of nonconforming Single-Family and Two-Family Dwellings.

Among other things, the By-law establishes appropriate uses and dimensional requirements throughout Hingham’s various zoning districts. Uses that are in accordance with permitted uses in a given district, such as a retail store in a business district or a Single-Family Dwelling in a residential district, are

referred to as “conforming” uses. Similarly, structures that are in accordance with permitted dimensions in a given district, such as a building that does not infringe on required property line setback dimensions, are referred to as “conforming” structures.

Conversely, “nonconforming” conditions can relate to a use, such as a retail store located in a residential district, or a dimension, such as a structure located 15 feet from a property line in a district where a 25-foot setback is required by the By-law. In order to be considered legally nonconforming, and therefore protected, the condition (i.e. the use or the dimension) must have existed prior to the adoption of the zoning regulation that made it unlawful. These legally nonconforming uses and structures are commonly referred to as “grandfathered,” which generally means that they can be maintained and improved under certain circumstances.

However, once abandoned or no longer used for a certain period of time, legally nonconforming conditions may lose their protected status absent some local exemption provided by the Town that allows the condition to be reestablished. This Article provides more detail regarding such a local exemption in the By-law.

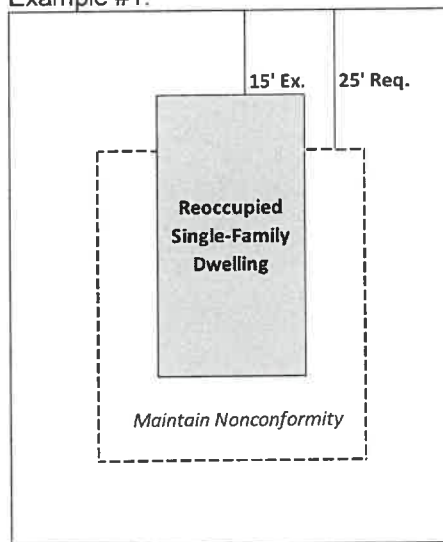
Section III-I, D of the Zoning By-law regulates the abandonment or discontinuance of nonconformities and establishes parameters for when they might be reestablished. The Hingham Zoning Board of Appeals (“the Board”) proposed this amendment to specify the exemptions that relate to abandoned or discontinued nonconforming Single-Family and Two-Family Dwellings.

The proposed amendment more clearly states than the existing language that a conforming Single-Family or Two-Family Dwelling use may be reestablished in a dimensionally nonconforming structure that had been abandoned or discontinued for a period of more than two years. Discontinued, in this context, means not used or occupied.

The amendment also restricts changes that could be made to the building or structure in reestablishing the conforming use. These changes are limited to any alteration, reconstruction, addition, extension, or structural change that does not extend the yard and/or height dimensional conditions that were nonconforming at the time the building or structure was abandoned or discontinued. Nonconforming lot dimensions, including area and frontage, may also be maintained such that a conforming Single-Family or Two-Family use could be reestablished within a

nonconforming structure on an undersized lot or one with deficient frontage. Any changes to such structures that do not extend the nonconforming yard or height conditions would likewise not be considered an extension of the nonconforming lot conditions.

Example #1:



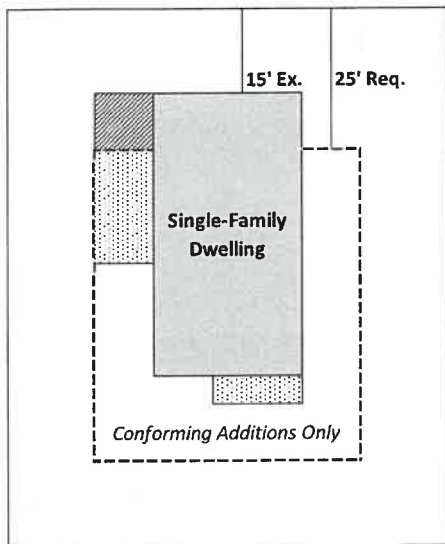
This dimensionally nonconforming structure (15 feet from front property line in a district with 25-foot setback required) had been abandoned. The amendment makes clear that despite its having been abandoned, the conforming use as a Single-Family Dwelling may be reestablished in the existing structure.

In addition, this structure could be reconstructed provided that the resulting structure does not extend the nonconforming dimension(s), whether they be yard or height dimensions or both. With the amendment, this structure could be reconstructed on the existing footprint, continuing the pre-reconstruction nonconforming dimensions, but not extending any dimensional non-conformity. Reconstructing and reducing any non-conforming dimensions would also be permitted.

Example #2:

The dimensionally nonconforming structure shown in Example #2 can be added to or expanded provided such addition or expansion complies with current height and yard dimensional requirements. As shown below, the crosshatched section (upper left-hand corner) would not be allowed as it would extend, or increase, the yard dimensional nonconformity by adding more structure within the required 25-foot front yard setback. The non-crosshatched additions would

be permitted as they do not increase or extend a dimensional nonconformity.



Finally, this amendment is not intended to permit an abandoned or discontinued nonconforming Single-Family and Two-Family Dwelling to be demolished and reconstructed at a later date. The use of the term “reconstruction” is intended to allow demolition and reconstruction as one continuous process, not two separate processes separated by an extended period of time.

Approval of this Article requires a two-thirds vote of Town Meeting.

The Planning Board and the Zoning Board of Appeals unanimously approved this Article. The Advisory Committee voted unanimously in support of this Article.

RECOMMENDED: That the town amend the Zoning By-law of the Town of Hingham, adopted March 10, 1941, as heretofore amended, as follows:

Item 1: amend section III-I,1.D.(i) by replacing the reference to “Single-Family or Two-Family residential use” where it appears in parentheses with “Single-Family Dwelling or Two-Family Dwelling”;

Item 2: replace section III-I,1.D.(iii)a. in its entirety with the following: “This subsection (iii) shall not apply to and shall not prohibit the conforming use as a Single-Family Dwelling or a Two-Family Dwelling, as applicable, of a building or structure

that would be a lawful nonconforming building or structure if it had not been deemed discontinued or abandoned hereunder; provided, however, that section III-I, 2 shall not apply and any alteration, reconstruction, addition, extension, or structural change to such building or structure shall not extend the yard and/or height dimensional conditions that were nonconforming at the time the building or structure was abandoned or discontinued.”;

Item 3: in section III-I,1.D.(iii)b., replace the reference to “subsection (iii) “a”” to “subsection (iii)a.”; and

Item 4: insert after section III-I,1.D.(iii)b. The following: “a building or structure reestablished pursuant to the above exceptions (iii)a or (iii)b shall no longer be considered nonconforming once a building permit or special permit has issued.”

ARTICLE 34: Will the Town amend the Zoning By-Law of the Town of Hingham, adopted March 10, 1941, as heretofore amended as follows:

Item 1: By amending Section III-C, 1 by deleting the following text: “25023C0018J, 25023C0019J, 25023C0038J, 25023C0081J, 25023C0082J, 25023C0083J, 25023C0084J, 25023C0091J, 25023C0092J, 25023C0101J, 25023C0102J, 25023C0103J, 25023C0104J, and 25023C0111J, dated July 17, 2012, and” and inserting the following text: “25023C0016J, 25025C0017J, 25023C0018J, 25023C0019J, 25023C0038J, 25023C0081J, 25023C0082J, 25023C0083J, 25023C0084J, and 25023C0102J, dated July 17, 2012, and 25023C0091K, 25023C0092K, 25023C0101K, 25023C0103K, 25023C0104K, and 25023C0111K, dated July 22, 2020,”; and

Item 2: By replacing the current map “Zoning Part B: Floodplain Protection Overlay District” with an updated map with the same title that (1) shows the updated floodplain information on the following panels: 25023C0091K, 25023C0092K, 25023C0101K, 25023C0103K, 25023C0104K, and 25023C0111K, (2) replaces the date with April 2020, and (3) in the footnote, replaces the phrase “Flood zone designations are based on 2012 Flood Insurance Rate Maps”, with the phrase “Flood zone designations are based on 2012 and 2020 Flood Insurance Rate Maps”; or act on anything relating thereto?

(Inserted by the Board of Selectmen)