

**Discuss and possibly vote to refer to Planning and Zoning potential amendments to §185-59 and §185-60.**

**§185-59**

This section includes requirements for repairing or reconstructing a nonconforming building that is damaged or destroyed by fire, storm, infestation, or other peril. The requirements distinguish between buildings in a flood zone and those outside the flood zone areas. The attached copy of this section notes several issues that are suggested for consideration and possible amendment.

**§185-60**

This section addresses conditions under which a nonconforming building or use may be extended or expanded. The attached copy includes issues associated primarily with §185-60B.

## Chapter 185. Zoning

### Article IX. Nonconformities

#### § 185-59. Damage or destruction of nonconforming use or building.

Does not address use

[Amended 1-11-2014 by Ord. No. 710]

If a nonconforming building is damaged by fire, storm, infestation, or other peril not caused intentionally by the property owner, it may be repaired or reconstructed to essentially the same configuration as existed prior to the damage, provided that application for all required building permits be made within one year and six months of the date of the damage. If a different configuration or an expansion of the original building is proposed, it must conform to all applicable regulations, including all applicable setbacks, height and elevation requirements.

What if building is within setbacks but is otherwise nonconforming?

All setbacks or at least one setback?

Elevation requirement not in this section

A. Except that in the process of repairing or reconstructing a residential-use structure located in a flood-prone area (e.g., a FEMA-designated VE, AE, or AO flood zone) that does not conform to the required setbacks in any respect and does not meet Town building-elevation standards and has suffered substantial damage, said structure shall be elevated to the relevant minimum building-elevation requirement as per § 185-60B of this chapter.

(1) For the purposes of this section, the meaning of "substantial damage" shall be that used by the National Flood Insurance Program (NFIP): "damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred."

(2) For the purposes of this chapter, the "Town's building-elevation requirement" shall be the sum of the FEMA-designated one-percent-annual-probability base flood elevation (BFE) for the flood zone in which the structure is located as shown on the effective Flood Insurance Rate Map (FIRM) plus the additional height required by the Town as part of its participation in the National Flood Insurance Program (NFIP), i.e., freeboard. (The required freeboard is specified in the Town Code in § 101-11, Elevation, floodproofing and constructions standards applicable within general floodplain areas. At the time of enactment of this section the Town's freeboard height requirement is one foot.)

Section reference incorrect

Delete this sentence?

Delete this paragraph?

(a) The structure's "building elevation" shall be defined as per NFIP regulations as "the elevation of the lowest habitable floor (including basement)" for buildings in AO and AE flood zones and as "the elevation of the bottom of the lowest horizontal structural member of the lowest floor" for buildings in a VE flood zone. Building elevation may at times be referred to as base elevation in Town code.

Delete or amend to correct height limit

(3) Under no circumstance shall any structure elevated under this section exceed the Town-wide thirty-five-foot building height limit.

## § 185-60. Extension of nonconforming use or building.

Extension and expansion used synonymously

A. This section describes conditions under which the expansion of a nonconforming use of a building is permitted. A nonconforming use of a building may be extended either within the building or outside the building or into a new addition or building on the same lot if the nonconforming use was in existence at the time of original enactment of this chapter in 1983. A nonconforming use of a building may be extended into a building on a contiguous lot if the nonconforming use and common ownership of such contiguous lots predate the time of original enactment of this chapter in 1983 and the contiguous lots have been continuously under common ownership since 1983. Any such expansion of a nonconforming use requires approval as a special exception by the Board of Adjustment as provided in Article X of this chapter, and is subject to the following special requirements:

- (1) The extension is for a use which is necessarily incident to the existing use;
- (2) Such extension shall not encroach on any of the setback or yard requirements for the district in which the use is located;
- (3) Such extension shall have a floor area not to exceed 50% of the floor area of the existing building or portion thereof;
- (4) It will not impair the value of the adjoining property or adversely affect the character of the neighborhood;
- (5) Such extension shall be permitted only within the maximums for square footage, number of bedrooms, and floor area ratio (FAR) applicable to the property; and

[Added 5-19-2023 by Ord. No. 811<sup>[1]</sup>]

[1] *Editor's Note: This ordinance also renumbered former Subsection A(5) as Subsection A(6).*

- (6) Only one extension shall be permitted by the Board of Adjustment during the life of the nonconforming use.

B. A building nonconforming only as to height, area, or bulk requirements may be altered or extended, provided such alteration or extension does not increase the degree of nonconformity in any respect. A building which does not conform to the required setbacks in any respect shall not be expanded either vertically or horizontally in the setback area.

"Extended" and "extension" seem equivalent to "expansion." So, a nonconforming building can be expanded if it does not increase the degree of nonconformity in any way.

This sentence either contradicts the first sentence or must be read as an exception in which expansion is prohibited if the building does not conform to any setback. Could this sentence be deleted in favor of the interpretation of the first sentence?

This is the definition of a nonconforming building. Sentence could begin simply A nonconforming building may be ....

### Definitions in Town Code

#### NONCONFORMING BUILDING

A building which does not conform with the height, area, or other bulk zoning standards of the district in which it is located.

#### NONCONFORMING USE

The use of a building or land which does not conform with the permitted uses, permitted accessory uses, conditional uses, or uses permitted by special exception of the district in which it is located.