

ARTICLE IV
Nonconforming Structures and Uses; Variances
[Amended 10-1992 STM by Art. 14]

§ 135-401. Permit granting authority.

For the purpose of this chapter, the Braintree Zoning Board of Appeal shall be the permit granting authority for the issuance of zoning variances and for authorizing alterations or changes to preexisting nonconforming structures.

§ 135-402. Continuation of nonconforming structures or uses.

Any use of land, building or structure, existing and lawful at the time of the original adoption of the Town's Zoning Bylaw or the adoption of subsequent amendments, which does not conform to the current requirements for the district in which such land, building or structure is situated may be continued except as hereinafter provided. Signs shall not be permitted as a nonconforming use.

§ 135-403. Alterations or reconstruction of nonconforming structures or uses.

- A. Preexisting nonconforming structures and structures containing a nonconforming use may be extended or altered only if there is a finding by the Zoning Board of Appeal (permit granting authority) that such extension or alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use. The proposed extension or structural change must itself comply with the Zoning Bylaw.
- B. In the event a nonconforming structure or a building or structure containing a nonconforming use is damaged or destroyed in whole or in part by fire or other casualty, it may within two years of the date of the demolition permit be replaced by a building or structure to be used for the same purpose as the one destroyed. The building or structure reconstructed shall not exceed in cubic content or footprint that of the original building. The use resumed shall begin within one year of the completion of such replacement or reconstruction. "Original building or structure," for the purpose hereof, shall be deemed to be the building or structure legally existing at the time of destruction. [Amended 5-3-2005 STM by Art. 27]
- C. Nonconforming one- and two-family dwellings shall be allowed, as a matter of right, extensions or structural changes which meet all current zoning requirements for setbacks, building coverage, lot coverage, height and use for a district in which they are located. [Amended 5-3-1993 ATM by Art. 38]

§ 135-404. Abandonment.

In the event a nonconforming building or structure is not used or a nonconforming use is not exercised for a period of two years, the right to maintain such nonconforming building or structure or to carry on such nonconforming use shall be deemed to have been abandoned and

extinguished. Thereafter, the premises shall be subject to all regulations applying to the zoning district in which it is located.

§ 135-405. Reversion to nonconforming status prohibited.

If a nonconforming structure or use or part thereof is changed to a conforming structure or use, no reversion to the nonconforming status shall be permitted.

§ 135-407. Variances.

- A. When, in its judgment, the public welfare and convenience will be substantially served and where the status of the neighborhood will be improved, the Zoning Board of Appeal (permit granting authority) may, after a public hearing and subject to such terms and conditions as it may impose, vary the application of this chapter as follows: Allow variance from the applicable provisions of this chapter if the permit granting authority finds that a literal enforcement of the provisions of this chapter would involve substantial hardship to the petitioner, financial or otherwise, owing to site-specific soil conditions, shape or topography of land or structures which do not generally affect the zoning district in which it is located and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this chapter.
- B. The Zoning Board of Appeal (permit granting authority) shall hold a public hearing in accordance with the provisions of MGL c. 40A. The Zoning Board of Appeal (permit granting authority) shall give notice as required by MGL.
- C. If the rights authorized by a variance are not exercised within one year of the date of granting of such variance, such rights shall lapse. However, the permit granting authority in its discretion and upon written application by the grantee may extend the time to exercise such rights for a period not to exceed six months. The application for such extension shall be filed with the permit granting authority prior to the expiration of the one-year period. If the permit granting authority does not grant such extension within 30 days of the date of application for extension, the extension shall be deemed denied.
- D. No variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located. However, such variances properly granted prior to January 1, 1976, but limited in time, may be extended on the same terms and conditions that were in effect for such variance upon said effective date.
- E. The Zoning Board of Appeal (permit granting authority) shall not take final action on a request for a variance or on a request for action on a nonconforming use until the Planning Board has submitted to the Zoning Board of Appeal (permit granting authority) in writing a report with recommendations on the matter or until the expiration of 30 days from the date of notice to the Planning Board.