



# TOWN OF ANDOVER

Town Clerk's Office  
36 Bartlet Street  
Andover, MA 01810  
(978) 623-8230  
townclerk@andoverma.us

Austin Simko  
*Deputy Town Manager/Town Clerk*

May 10, 2024

## **TO WHOM IT MAY CONCERN:**

This is to certify that at the second session of the Annual Town Meeting of the Inhabitants of the Town of Andover held on April 30, 2024, the following Article and VOTE was taken thereon, to wit:

### **ARTICLE 27. Zoning Bylaw Amendment Nonconforming Uses and Structures.**

To see if the Town will vote to amend Section 3.3 "Nonconforming Uses and Structures" of the Zoning Bylaw Article VIII to clarify when a variance or special permit is required for a catastrophe, demolition, derelict condition, reconstruction, extension, alteration, or change to a structure, as well as to provide illustrative examples of increases or intensifications of nonconformities or take any action related thereto.

Proposed changes as set forth in draft amended section 3.3 of the Article VIII (or as later amended by the Planning Board), as well as illustrative examples are on file in the Office of the Town Clerk, and the Department of Planning and Community Development, located at 36 Barlet Street, Andover, MA ; and on the Town's website at <https://andoverma.gov/149/Community-Development-Planning>.

*On request of the Inspector of Buildings*

Upon motion made and duly seconded it was VOTED to approve Article 27 as printed in the warrant, and recommended by the Planning Board on February 27, 2024.

It was then moved by David Brown of 31 Glenwood Road and duly seconded to amend the article by amending the text under Example No. 2, "1. Residential Structure." to read "a. Increases nonconformity, special permit required." A simple majority vote required for passage, the Moderator declared the Motion to Amend Passed.

**VOTE: A two-thirds vote required for passage, the amended Motion Passed in an electronic vote of 276 in favor, 9 opposed, and 10 abstaining.**

A true record  
A T T E S T

A handwritten signature in blue ink, appearing to read "Austin Simko". The signature is fluid and cursive, with the first name "Austin" and last name "Simko" clearly distinguishable.

Austin Simko  
Deputy Town Manager / Town Clerk

**FORM 2 – ARTICLE 27**

**May 10, 2024**

**ZONING BYLAW ARTICLE VIII AMENDED**

*Zoning Bylaw Article VIII Section 3.3 "Nonconforming Uses and Structures" amended to read as follows:*

NOTE:

Proposed new language is shown underlined.

Proposed language to be deleted is shown in ~~Strikeout~~.

---

### **3.3 NONCONFORMING USES AND STRUCTURES.**

---

#### **3.3.1 Applicability.**

This Bylaw shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building permit or special permit issued before the first publication of notice of the public hearing required for zoning bylaw adoption or amendment by G.L. c. 40A, §5. at which this Bylaw, and any If the zoning amendments ~~were~~ are adopted by Town Meeting such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished unless authorized under this section 3.3.

#### **3.3.2 Nonconforming Uses.**

The Zoning Board of Appeals may grant a special permit to change or substantially extend a nonconforming use in accordance with this section only if it makes a finding- ~~determines~~ that the change or extension shall not be substantially more detrimental to the neighborhood than the existing nonconforming use.

#### **3.3.3 Nonconforming Structures.**

If the Building Commissioner determines that the nonconforming nature of the structure would be increased by the proposed reconstruction, extension, alteration, or change, the Zoning Board of Appeals may grant a special permit to reconstruct, extend, alter, or change a nonconforming structure other than single or two-family dwellings in accordance with this section only if it makes a finding- ~~determines~~ that the reconstruction, extension, alteration, or change shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The following types of changes to nonconforming structures may be considered by the Zoning Board of Appeals:

1. Reconstructed, extended, or structurally changed; or
2. Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.

#### **3.3.4 Variance Required.**

Except as provided in Section 3.3.5 below, the reconstruction, extension, or structural change of a nonconforming structure other than single or two-family dwellings in such a manner as to increase an existing nonconformity or create a new nonconformity shall require the grant of a variance by the Zoning Board of Appeals. For the purposes of this section, the extension of an exterior wall at or along the same nonconforming distance within a required yard shall require the grant of a variance by the Zoning Board of Appeals.

### **3.3.5 Nonconforming Single- and Two-Family Residential Structures.**

Nonconforming single- and two-family residential structures may be reconstructed, extended, altered, or structurally changed upon a determination by the Building Commissioner that the proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of the structure.

1. The following circumstances, individually or in combination, shall not be deemed to increase the nonconforming nature of the structure:
  - a. Reconstruction, extension, alteration, or change ~~Alteration~~ to a structure that complies with all current setback and building height requirements on a lot with insufficient area, where the reconstruction, extension, alteration, or change will also comply with all current requirements.
  - b. Reconstruction, extension, alteration, or change ~~Alteration~~ to a structure that complies with all current setback and building height requirements on a lot with insufficient frontage, where the reconstruction, extension, alteration, or change will also comply with all current requirements.
  - c. Reconstruction, extension, alteration, or change ~~Alteration~~ to a structure that presently encroaches upon one or more required setback areas, where the reconstruction, extension, alteration, or change will comply with all current setback, yard, and building height requirements.
2. If the Building Commissioner determines that the nonconforming nature of the structure would be increased by the proposed reconstruction, extension, alteration, or change, the Zoning Board of Appeals may, by special permit, allow the reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

### **3.3.6 Abandonment or Non-Use.**

A nonconforming use or structure that has been abandoned or not used for a period of two consecutive years shall lose its protected status and be subject to all the provisions of this Bylaw.

### **3.3.7 Catastrophe. ~~or Demolition.~~**

Any nonconforming structure may be reconstructed after a fire, explosion or other catastrophe, or after any demolition following such catastrophe provided that reconstruction is completed within 24 months after such catastrophe or demolition, and provided that the building as reconstructed shall not exceed the ~~be only as great in~~ volume or area as the original nonconforming structure unless a larger volume or area is authorized by special permit from the Zoning Board of Appeals. The time for completing reconstruction may be extended by the Zoning Board of Appeals for good cause.

### **3.3.8 Demolition of Nonconforming Derelict Structures.**

If the Building Commissioner determines that a derelict nonconforming structure requires demolition and the new proposed structure does not conform to all Zoning Bylaw requirements, then the Zoning Board of Appeals may, by special permit, allow for the demolition and

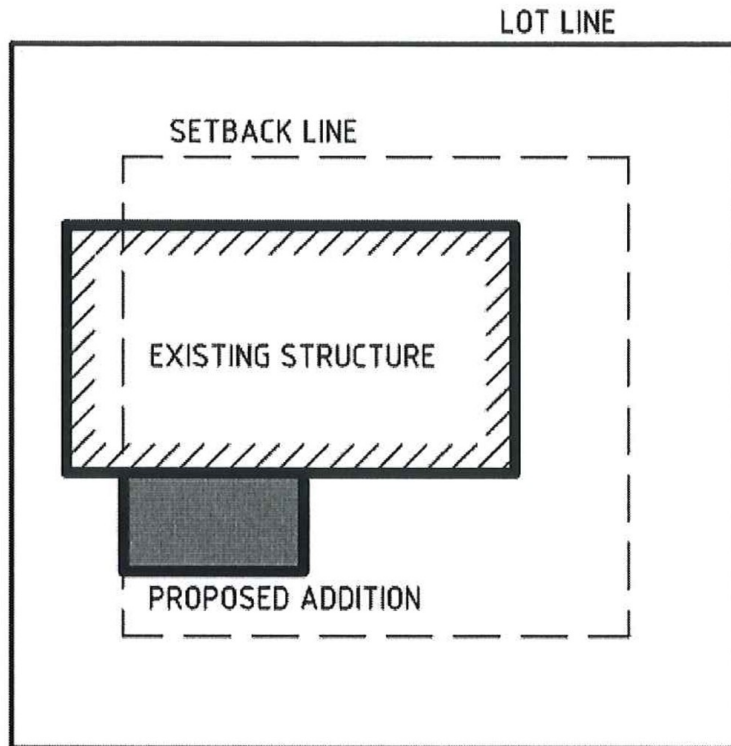
rebuilding of the derelict structure in whole, or in part, where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

**3.3.9 Reversion to Nonconformity.**

No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use.

**3.3.10 Illustrations of Nonconforming Structures.**

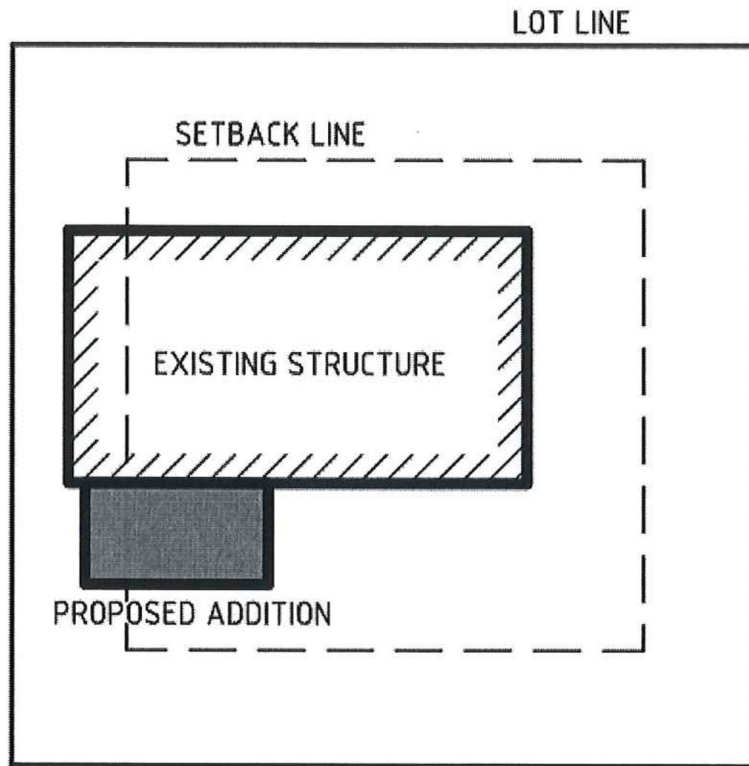
Example No. 1



Proposed addition complies with zoning.

1. Residential Structure (Single- or Two-Family Residence).
  - a. Does not increase or intensify nonconformity.
  - b. Addition permitted as of right after determination by Building Department.
2. Nonresidential Structure (Commercial or Residential Structure other than a Single- or Two-Family Residence).
  - a. Complies with zoning. No variance needed.
  - b. Permitted upon a finding by Building Department.

Example No. 2



Proposed addition does not comply with zoning and infringes into setback.

1. Residential Structure.
  - a. ~~Intensifies nonconformity variance required.~~ *Increases nonconformity, special permit required.*
2. Nonresidential Structure.
  - a. Does not comply with zoning, so variance is needed.

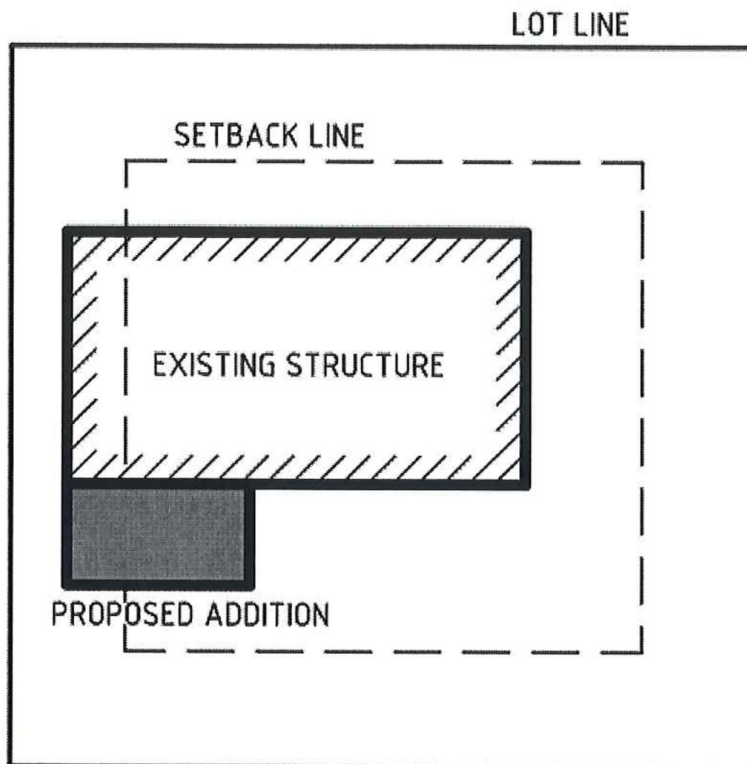
**A TRUE COPY**

**ATTEST:** *Ante Quib*

**Town Clerk**



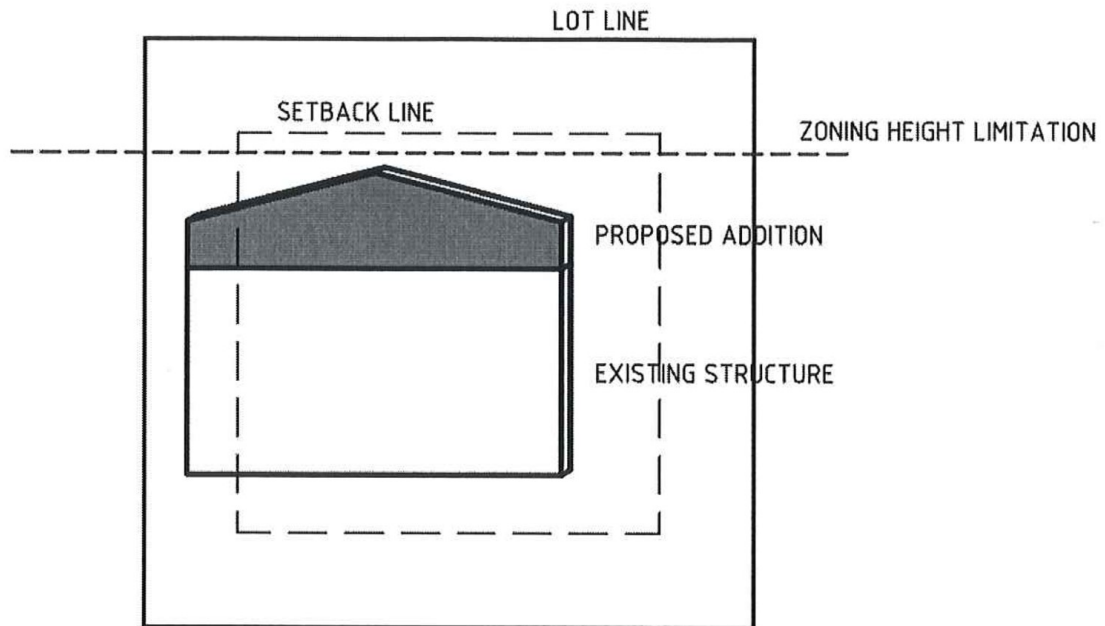
Example No. 3



Proposed addition does not comply with zoning and infringes into setback.

1. Residential Structure.
  - a. Intensifies nonconformity variance required.
  
2. Nonresidential Structure.
  - a. Does not comply with zoning, so variance is needed.

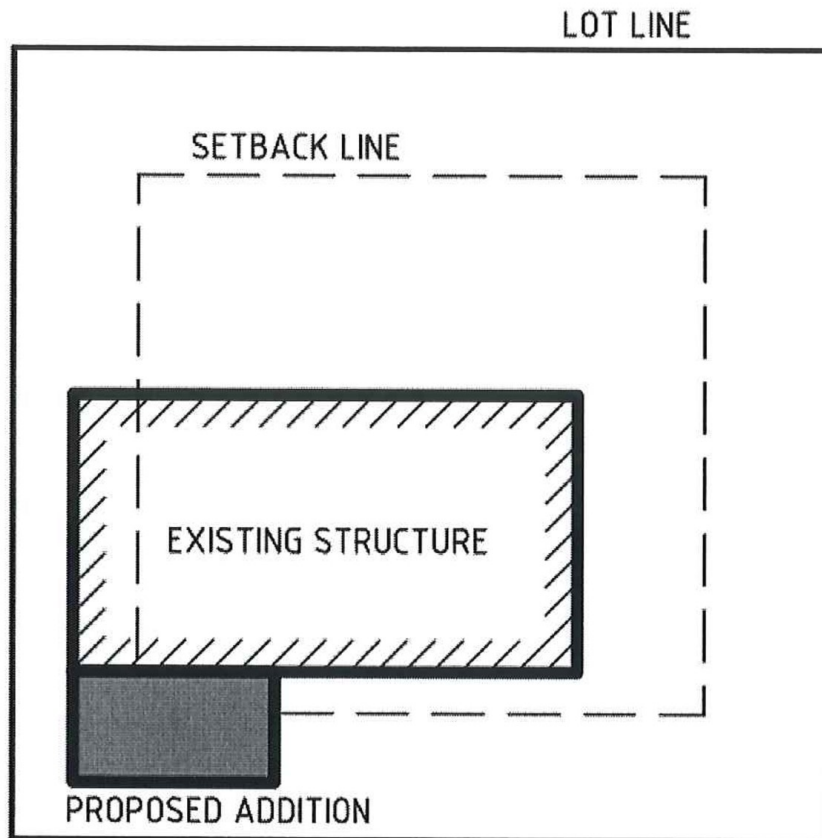
Example No. 4



Proposed addition does not comply with zoning.

1. Residential Structure.
  - a. Intensifies nonconformity variance required.
  
2. Nonresidential Structure.
  - a. Does not comply with zoning, so variance is needed.

Example No. 5



Proposed addition does not comply with zoning and infringes into setback.

1. Residential Structure.
  - a. Intensifies nonconformity and results in additional one, variance required.
2. Nonresidential Structure.
  - a. Does not comply with zoning, so variance needed.

A true record  
A T T E S T

A handwritten signature in blue ink, appearing to read "Austin Simko". The signature is fluid and cursive, with the first name "Austin" written in a larger, more prominent script than the last name "Simko".

Austin Simko  
Town Clerk