

# **ZONING BYLAW AMENDMENTS**

Article 8, Section 3.8 (General Use Regulations Pertaining to All Districts)

Article 9, Section 6.2 (Common Drives)

Article 10, Section 3.9 (NON-CONFORMING USES and STRUCTURES)



**ADOPTED: December 13, 2005**



Final Version of Zoning Bylaw as Amended:

**TOWN OF STOW  
ZONING BYLAW**

**3.8 General Use Regulations Pertaining to All Districts**

3.8.1 Pertaining to all Districts:

3.8.1.1 BUILDING construction - All BUILDINGS shall be constructed as prescribed by the State Building Code.

3.8.1.2 Odor, dust and smoke - No such offensive emissions shall be discernible beyond the property line or, in the case of an industrial park development or of multiple use of the property, beyond one hundred (100) feet of the BUILDING generating the emission, except that in no case shall the discharge from any source exceed the following limits:

1. Smoke measured at the point of discharge into the air shall not exceed a density of No. 1 on the Ringlemen Smoke Chart as published by the U. S. Bureau of Mines, except that a smoke of a density not darker than No. 2 on the Ringlemen Chart may be emitted for not more than three (3) minutes in any one (1) hour.
2. Lime dust, as CaO, measured at the property line of any LOT on which the activity creates such dust, shall not exceed ten (10) micrograms per cubic meter of air.
3. Total particulate matter measured at all stacks or other points of emission to the air shall not exceed thirty (30) grams per hour per acre of land included in the LOT.
4. Odors shall not exceed the smallest values given in Table III (Odor Thresholds) in Chapter 5 of the "Air Pollution Manual" Manufacturing Chemists Association, Inc., Washington, D.C., 1951.
5. All measurements of air pollution shall be by the procedures, and with equipment, approved by the BUILDING INSPECTOR, which procedures and equipment shall be of the latest generally recognized development and design readily available.

3.8.1.3 Noise - The noise generated on any LOT, measured at any point beyond the property lines of the LOT on which the noise source is located, shall not cause the total sound level to be more than three (3) decibels above the natural ambient sound level except as provided below:

1. For not more than five (5) minutes in any one (1) hour the noise generated shall not cause the total sound level to be more than ten (10) decibels above the natural ambient sound level.
2. For not more than sixty (60) minutes in any seven (7) day period the noise generated shall not cause the total sound level to be more than thirty (30) decibels above the natural ambient sound level.
3. Noise making devices which are maintained and are utilized strictly to serve as safety warning devices are excluded from these regulations.

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Measurements shall be conducted by personnel approved by the BUILDING INSPECTOR using the "A" weighting on a standard commercial total sound level instrument approved by the BUILDING INSPECTOR. For the purpose of this Bylaw the natural sound level shall be assumed to be forty (40) decibels above 0.0002 microbar during hours of daylight, and thirty (30) decibels above 0.0002 microbar at all other times.

- 3.8.1.4 Heat, glare, vibration, and radiation - No heat, glare, or vibration shall be discernible without instruments from the outside of any STRUCTURE, and no radiation shall be discernible from the outside of the STRUCTURE with or without instruments.
- 3.8.1.5 Exterior lighting - No exterior lighting, or other street lighting approved by the Selectmen, shall shine on adjacent properties or towards any STREET in such a manner as to create a nuisance or hazard.
- 3.8.1.6 Screening, surfacing, parking, and SIGNS - As provided in the sign section and Parking Section of this Bylaw.
- 3.8.1.7 Waste disposal and water supply - Regulations of the State Board of Health and the Stow Board of Health shall be met and shall be indicated on a site plan, when a site plan is required.
- 3.8.1.8 Scientific Uses - Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a special permit granted by the Planning Board provided the granting authority finds that the proposed ACCESSORY USE does not substantially derogate from the public good.
- 3.8.1.9 Drainage - When a subdivision approval or a Site Plan Approval or a Special Permit is required drainage shall be designed so that the following conditions shall be met during and after construction and development:
  - 1. Pre-development surface water runoff rates and volumes shall not be increased;
  - 2. Pre-development GROUND WATER infiltration rates shall not be increased;
  - 3. Pre-development erosion and sedimentation rates shall not be increased; and
  - 4. No building permit, special permit or subdivision approval shall be granted if these conditions cannot be met.
- 3.8.1.10 Erosion control - Site design and materials and construction processes shall be designed to avoid erosion damage, sedimentation or uncontrolled surface water runoff.
  - 1. Grading or construction which will result in SLOPES of twenty-five percent (25%) or greater on fifty percent (50%) or more of the LOT area or on thirty-two thousand (32,000) square feet or more on a single parcel, even if less than half of the LOT area, shall be allowed only under special permit from the Planning Board. This shall be granted only under demonstration that adequate provisions have been made to protect against erosion, soil instability, uncontrolled degradation. Applications and plans for such special permits shall be referred to the Conservation Commission.
  - 2. Where 3.8.1.10.1 and 3.8.1.10.3 apply, all slopes exceeding fifteen percent (15%) resulting from site grading shall be covered with topsoil to a depth of at least six inches and planted with vegetative cover sufficient to prevent erosion.

3. No area totaling one acre or more on any parcel or contiguous parcels in the same ownership shall have existing vegetation clear-stripped or be filled six inches or more so as to destroy existing vegetation unless in conjunction with agricultural activity or unless within STREETS which are either public or designated on an approved subdivision plan or unless a special permit is approved by the Planning Board on the condition that run-off will be controlled, erosion prevented and either a constructed surface or cover vegetation will be provided not later than the first full spring season immediately following completion of the stripping operation. No stripped area or areas which are allowed by special permit shall remain through the winter without temporary cover of winter rye or similar plant material being provided for soil control, except in the case of agricultural activity when such temporary cover would be infeasible.

The BUILDING INSPECTOR shall require information of the applicant as necessary for him to ensure compliance with these requirements, including if necessary, elevation at key locations, description of vegetative cover and the nature of impoundment basins proposed, if any.

5. Where resultant site grades will exceed fifteen percent (15%) the Town shall require a performance bond to ensure compliance with these requirements.
6. Where 3.8.1.10.1 and 3.8.1.10.3 apply, hillside areas shall be retained with vegetative cover as follows:

Average Slope	Minimum % of Land to Remain in Vegetation
10.0 - 14.9	25
15.0 - 19.9	40
20.0 - 24.9	55
25.0 - 29.9	70
30.0 +	85

7. Before a project disturbs one acre or more of land, either by itself or as part of a larger development, and storm water could run off the site in a directed manner (via a culvert, ditch, storm sewer system, roadway, storm dug channel, etc) and reach a surface water (pond, stream, wetland, etc.), a copy of the Stormwater Pollution Prevention Plan (SWPPP) and the Notice of Intent filed with the Environmental Protection Agency (EPA) under the National Pollutant Discharge Elimination System (NPDES) shall be submitted to the Planning Board.

3.8.1.11 Special Provisions to Enhance Access for Handicapped Persons - Attempts to provide and improve handicapped access on LOTS with established residential or non-residential uses often create conflicts with various dimensional requirements of this Bylaw. Therefore, the following partial exemptions shall apply in order to facilitate the installation of handicapped parking spaces, handicapped access ramps and other amenities designed to improve access for the handicapped to existing BUILDINGS and STRUCTURES. The requirements listed in (1) through (3) below may be reduced only to the degree necessary to be consistent with the requirements of the Massachusetts Architectural Access Board.

1. Any minimum number of required parking spaces.
2. Any minimum required OPEN SPACE.
3. Any minimum required FRONT, SIDE and REAR YARD.

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4. No special permit shall be required for the installation of handicapped access amenities and for the implementation of any exemption provided herein.
5. All proposed handicapped access amenities and any of the exemptions provided herein shall be approved by the BUILDING INSPECTOR prior to any work or construction.

3.8.1.12 Wireless Communication Facility - A transmission facility for the purpose of personal wireless communication services such as satellite dishes or antennae, with or without a BUILDING that shelters associated electronic or mechanical equipment.

3.8.2 Use Regulations Pertaining to the Business, Commercial, and Industrial Districts

3.8.2.1 Storage - All materials, supplies and equipment shall be stored in accord with Fire Prevention Standards of the National Board of Fire Underwriters and shall be screened from view from public ways or abutting properties by an opaque FENCE or screening at least six (6) feet but not more than twenty (20) feet high.

3.8.2.2 No open burning is permitted, unless in an incinerator of a type approved by the Board of Selectmen.

3.8.3 Use Regulations Pertaining to the Residential District

3.8.3.1 Exterior lighting shall conform with the requirements of Section 3.8.1.5, except that the use of exterior lighting by a commercial or business activity or operation during the period from one-half hour after sunset to one-half hour before sunrise shall not be permitted. This provision shall not preclude the use of emergency lighting required by a public agency in the performance of its duties, lighting of SIGNS in conformance with the general regulations included in Section 6.3.1, customary holiday lighting or low level illumination of entranceways, exits and driveways.

A True Copy Attest:



Linda Hathaway, Stow Town Clerk

Final Version of Zoning Bylaw as Amended:

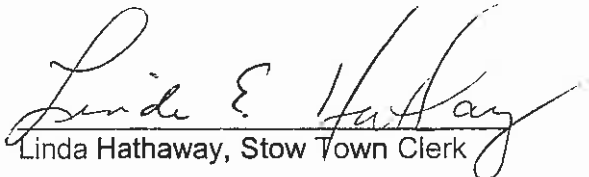
**TOWN OF STOW  
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**6.2 Common Drive**

Common drives are encouraged and may be allowed as provided in this section. In the Residential District, construction of a private drive to be shared by more than one LOT, but not more than three (3) LOTS, is permitted subject to the following specifications:

- 6.2.1 The common drive surface shall be twelve (12) feet wide. It shall have an 11-inch gravel base and a 4-inch compacted dense graded surface.
- 6.2.2 The maximum length of the common drive shall be five hundred (500) feet and shall be measured from the near side line of the street along the center line of the common drive to the throat of the furthest junction.
- 6.2.3 The common drive shall lie entirely within the LOTS being served.
- 6.2.4 Use of the common drive by vehicle traffic shall be limited to ingress and egress and does not include the parking of vehicles on the common drive, except that occasional overflow parking of guests' vehicles shall be permitted, provided that such vehicles are parked in a manner that does not impede traffic flow and that such parking does not extend overnight.
- 6.2.5 The owners of the LOTS shall bear and have joint and several responsibilities and obligations for the repair, maintenance, reconstruction and snowplowing of the common drive, so as to provide continuous year-round access for vehicle traffic for the convenience of the owners of the LOTS, and to provide continuous year-round access for all emergency, fire, rescue, police, moving, construction and maintenance vehicles. No building permit shall be issued until a restriction or covenant to run with the land has been approved by the Planning Board in a form satisfactory to assure compliance with this provision and a copy of the document received by the BUILDING INSPECTOR.
- 6.2.6 An Erosion Control and Sedimentation Plan, in accordance with Planning Board Rules and Regulations governing the same, shall be submitted to and approved by the Planning Board.
- 6.2.7 As part of an approved subdivision or special permit granted by the Planning Board, the number of LOTS served by a common drive may be increased to five (5).

A True Copy Attest:

  
Linda Hathaway, Stow Town Clerk





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**3.9 NON-CONFORMING USES AND STRUCTURES**

3.9.1 A pre-existing NON-CONFORMING USE or STRUCTURE may continue. However, other than Wireless Service Facilities, which may not be altered or extended unless specifically allowed in Section 3.11 of the Bylaw, no lawful pre-existing NON-CONFORMING USES or STRUCTURES may be extended or altered except in conformance with Sections 3.9.6 and 3.9.7 below. All applications for extensions and/or alterations shall include a scaled floor plan of the STRUCTURE(S) in question showing FLOOR AREA and ground coverage prior to and following the proposed changes in order to determine the degree to which the use has expanded from its original size. All applications for such special permits shall include such information and plans as required for a special permit as required in Section 9.2. Applicants shall also comply with the following site planning standards for "NON-CONFORMING USES or STRUCTURES":

3.9.1.1 It shall comply with the parking requirements of the Parking Section of this Bylaw, except as superseded by 3.9.1.4., 3.9.1.5. and 3.9.1.6. below;

3.9.1.2 It shall comply with the SIGN section of this Bylaw;

3.9.1.3 It shall comply with the General Use Regulations section of this Bylaw;

3.9.1.4 No parking, BUILDING or outdoor storage facility of materials or products shall be closer than 35 feet from the side or rear LOT line, nor closer than 50 feet from the STREET LINE;

3.9.1.5 Parking and outdoor storage of materials or products shall be screened from the view of abutting properties and the view from public ways by vegetative screens, opaque fencing or topography; and

3.9.1.6 There shall be sufficient space and provision on site for the maneuvering of vehicles so as to allow loading and unloading of materials and products without impeding the flow of traffic along public ways or blocking pedestrian sidewalks, paths and rights of way.

3.9.2 If said NON-CONFORMING USE has been changed to a more restricted use, it shall not again be changed to a less restricted use.

3.9.3 If the NON-CONFORMING USE is discontinued or abandoned for a period of two (2) years or more, it shall not be re-established except upon a special permit granted by the Board of Appeals.

3.9.4 A non-conforming single or two-family DWELLING or agricultural STRUCTURE which has been damaged or removed may be rebuilt or restored at the same location and again used as previously, provided that the owner shall start operations for restoring and rebuilding on said premises within twelve (12) months after such damage or removal and reconstruction is completed and occupancy begun within two (2) years of start of

restoration except upon a special permit for a longer period of time granted by the Board of Appeals.

3.9.5 An amendment to the Zoning Bylaw 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 bylaw required by Section 5, 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 non-conforming nature of said structure. In cases involving construction, such construction shall be carried through to completion continuously and expeditiously. If such construction has ceased for a period of two or more years, it shall be considered abandoned, and exemptions from zoning bylaw amendments shall cease to apply.

**3.9.6 Changes of Use and Limitation on Intensity and Size of Use - Other Than Single or Two-Family Residential Dwellings:**

3.9.6.1 As provided in G. L. c. 40A, sec. 6, a lawfully preexisting nonconforming use and/or structure, other than a single or two-family residential dwelling, may be reconstructed, altered or extended only if:

1. said reconstruction, alteration or extension itself conforms with all the provisions of the Zoning Bylaw;
2. there is a finding by the Board of Appeals that such reconstruction, alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use;
3. that said extension, alteration or change is in accordance with the guidelines noted below; and
4. that the Board of Appeals grants a special permit as provided in Section 9.2.

3.9.6.2 Guidelines for Review of Extensions, Alterations or Changes to Preexisting, Nonconforming Uses and Structures: Recognizing the need to provide guidelines for determining relative impacts upon the Town and the immediate neighborhood from an expansion, alteration or change of preexisting nonconforming uses and structures, and recognizing the basis and consistent principles of zoning with respect to minimizing nonconforming uses and structures, the following shall apply to the review of special permit applications under this Section:

1. the Board of Appeals shall encourage extensions, alterations or changes to nonconforming structures and uses toward greater, if not complete, conformance with the provisions of the Zoning Bylaw and to reduce the degree of nonconformity;
2. the Board of Appeals shall not encourage the expansion of a nonconforming structure or use as measured by either the:

- a) amount of floor space or land area used, or
  - b) volume of activity, including but not limited to an increase in the intensity of use and/or a change in the nature or purpose of the use;
3. the Board of Appeals shall prohibit the expansion of nonconforming structures and uses unless there will be no demonstrable adverse impacts on abutting properties and those properties that generally characterize the neighborhood or locus within which the expansion is sought, and;
4. the Board of Appeals shall not encourage the expansion of nonconforming structures and uses if the expansion will negatively impact the Town of Stow's ground or surface waterbodies.

3.9.6.3 Table of Presumptively Not More Detrimental Extensions, Alterations, or Changes to Preexisting, Nonconforming Uses and Structures:

An extension, alteration or change to a lawfully preexisting nonconforming use or structure shall be presumed not to be substantially more detrimental to the neighborhood if the guidelines of Section 3.9.6.2 are considered and if the extension, alteration or change also is in compliance with the following:

**TABLE OF PRESUMPTIVELY NOT MORE DETRIMENTAL EXTENSIONS, ALTERATIONS, OR CHANGES TO OTHER THAN SINGLE OR TWO-FAMILY RESIDENTIAL DWELLINGS**

Issue	Presumptively Allowable Changes, Alterations, or Extensions
If maximum floor area ratio requirements are exceeded and/or minimum open space requirements are not met.	The extension, alteration, or change does not: 1) increase the floor area ratio requirements; 2) decrease the existing floor area ratio and/or; 3) results in an increase of the open space requirements of Section 4.4.
If the structure or use exceeds current parking or loading area requirements.	The requirements of Section 7 of the Zoning Bylaw are met or if the Board of Appeals determines that the existing use and proposed expansion or site conditions do not warrant the number of parking spaces required by Section 7.3.3.
If the structure or use exceeds, or is in violation of, or violates any other provision of the Zoning Bylaw.	The extension, alteration, or change meets the guidelines specified in Section 3.9.6.2 above.

3.9.7 Alteration, Reconstruction, Extension or Structural Changes to Preexisting Nonconforming Single and Two-Family Residential Structures.

3.9.7.1 As provided for in G. L. c. 40A sec. 6, a nonconforming single or two-family dwelling or structure accessory thereto may be altered, reconstructed, extended or otherwise structurally changed provided that:

1. the proposed alteration, extension or structural change itself conforms to the requirements of the present Bylaw, and does not intensify any existing non-conformities or result in any additional non-conformities, in which event the Building Inspector may issue a building permit and an application to the Board of Appeals need not be made; or
2. the proposed alteration, extension or structural change itself does not conform to the requirements of the present Bylaw, and does intensify existing non-conformities or results in additional non-conformities, in which event a Petition for Special Permit must be made to the Board of Appeals, and the Board of Appeals must find that:
  - a) there is no substantial increase in the nonconforming nature of said structure; and
  - b) such reconstruction, alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use.

3.9.7.2 In determining the meaning of the phrases "increase the nonconforming nature of said structure" and "substantially more detrimental to the neighborhood," the following shall apply to the review of Special Permit Petitions subject to this provision to alter, reconstruct, extend or structurally change a preexisting nonconforming single- or two-family residential structure:

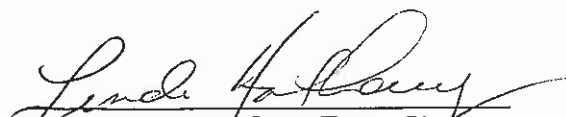
1. The Board of Appeals must make a determination as to the particular respect or respects in which the existing structure or lot does not conform to the requirements of the present Bylaw;
2. Should the Board of Appeals conclude that the proposed change would substantially increase the nonconforming nature of the structure or lot, the applicant will not be entitled to the issuance of a special permit;
3. If the Board of Appeals determines, that the proposal will not substantially increase the nonconforming nature of the structure or the lot, the applicant will also be required to show that the change will not be substantially more detrimental than the existing nonconforming structure or use to the neighborhood;
4. If the Board of Appeals determines that the proposal will be more substantially detrimental to the neighborhood, the special permit sought will be denied unless the Board of Appeals determines that a special permit can be approved with conditions that would make the change substantially not more detrimental, in which case the Board of Appeals may approve a special permit with such conditions.
5. For the purposes of this Section, determination of "substantially more detrimental to the neighborhood" shall include consideration of and impacts to, the general and immediate neighborhood from the resulting height, building coverage, impervious

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coverage, and width of the altered, reconstructed, extended or structurally changed structure. Additionally, a determination whether an altered, reconstructed, extended or structurally changed structure will be "substantially more detrimental to the neighborhood" shall include the resulting impacts to views and vistas from abutting properties and public and private ways, increase in traffic, noise, surface water runoff and related site planning issues.

*A True Copy Attest:*

  
Linda Hathaway, Stow Town Clerk

