



CODE ENFORCEMENT DEPARTMENT

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To: Developers and General Contractors

From: Christopher Laskey, Code Enforcement Director

Re: Protocol for ZBA Submittal for Teardowns/Additions on Under-sized Lots

This memo is meant for developers and contractors primarily involved with substantial redevelopment of pre-existing, non-conforming single-family dwellings and lots, up to and including the tearing down and rebuilding of the dwelling on the same lot.

Current protocol allows a pre-existing, non-conforming single or two-family dwelling on a non-conforming (under-sized) lot to be razed and rebuilt as of right, as long as the new structure meets our current setback requirements.

In May of this year, our Town Counsel introduced case law on pre-existing, non-conforming dwellings/lots that contradict our current practice as stated above. In short, the more recent case law suggests that, *even when the new dwelling meets the current setback requirements*, if an existing non-conforming dwelling on a non-conforming (under-sized) lot is proposed to be razed and rebuilt larger and/or taller than the existing home then the Zoning Board of Appeals must first grant a Special Permit/Finding through the ZBA process. This also applies to large additions to pre-existing, non-conforming structures/lots. Case law states that by increasing lot coverage (i.e. by building a larger dwelling) and/or increasing the height of the dwelling, it is *intensifying* the pre-existing non-conformity (i.e. the under-sized lot).

Based on this more recent case law, this office will be implementing new protocol starting November 2, 2015, which will require most ‘teardown/rebuilds’ and large additions on non-conforming (under-sized) lots to go before the Zoning Board of Appeals for a Special Permit/Finding *prior to filing for a building permit.*

In accordance with s.7.1.4 of the Bedford Zoning Bylaws, the Building Inspector determines whether any proposed alteration, reconstruction or extension increases the non-conforming nature of a pre-existing, non-conforming structure/lot. Below are the guidelines of what will and will not require review by the Zoning Board of Appeals in these particular cases:

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Projects to be reviewed by the Board:

- All “teardowns” where the proposed building footprint and/or height is larger/taller than the existing dwelling
- 2nd story additions on existing single-story dwellings
- Addition or multiple additions with a total footprint over 600 sq.ft.
- Decks that do not meet the minimum setback requirements.

Projects that require NO review by the Board:

- Addition or multiple additions with a total footprint of 600 sq.ft. or less (if the existing house is single-story then one story addition is allowed/if the existing house is two-story then two story addition is allowed) and meet the minimum setback requirements
- Decks that meet the minimum setback requirements
- All “teardowns” where the proposed building footprint and/or height is **not** larger/taller than the existing dwelling and meet the minimum setback requirements.

What the Zoning Board Will be Looking at When Reviewing These Petitions

The Board will be looking at whether or not the proposed dwelling or addition will 1) be in harmony with the purpose and intent of the Bylaw and 2) will not be substantially more detrimental or injurious to the neighborhood in which it is to take place.

In the case law cited by Town Counsel (Bransford v. ZBA of Edgartown), the Court determined that the purpose of lot size includes **maintaining the character of a neighborhood, controlling density, providing adequate light and air and preventing overcrowding of land**. When a larger/taller house/addition is proposed to be built on an under-sized lot, these elements are affected and these are among the elements that the Board will be looking at when making their decision. Thus, the Board may perform a site inspection to the address in question to take into account the size and height of the surrounding homes in the neighborhood and how the proposed dwelling/addition’s mass and/or height might impact those homes. Will the proposed structure’s mass/height affect abutters’ light source and/or view? Will the proposed structure cover too much of the under-sized lot and overcrowd the land?

What Shall be Submitted to the Board

- Certified plot plan by a qualified Registered Professional showing, among other things, existing/proposed dwelling and existing/proposed grades.
- Elevation drawings and/or photos of existing/proposed dwelling and their relation to adjacent properties.
- Photos of adjacent properties including a wide angle photo capturing the property in question in relation to the abutting houses directly to the left, right and rear of it.