

- (c) Where a building presents a variety of vertical planes to any given lot or street line, no plane shall be closer to the street or building line or lot line than permitted by the application to such plane of the appropriate formula in the tables of dimensional requirements in Section 5.30. For all planes set forward of the setback line required by said tables for the building if it were constructed in a single vertical plane, other planes must be set behind the setback line so calculated. The result shall be that the sum of the products of the setback required for each plane times the facing area of each plane respectively shall be at least as great as the product of the setback required by the appropriate table for the building if it were constructed in a single vertical plane times the facing area of the building if viewed as a single plane. (see illustration below)

The product of

$$(\text{Setback}_1 \times \text{facing area}_1) + (\text{Setback}_2 \times \text{facing area}_2)$$

MUST EQUAL OR EXCEED the product of

$$(\text{Single plane Setback}) \times (\text{Single plane facing area})$$

#### 5.25 FAR Exceptions

A parking garage, or that portion of a structure devoted to parking automobiles, shall be exempt from the requirements as to floor area ratio but shall conform to all other dimensional requirements of the district in which it is located.

#### 5.26 Conversion of Dwellings

No new dwelling unit created by the conversion of an existing dwelling into a greater number of units or by addition or enlargement of an existing dwelling shall be permitted unless the requirements of minimum lot area for each dwelling unit, maximum ratio of floor area to lot area, usable open space and off-street parking are satisfied for all dwelling units (in existence and proposed) in the dwelling after the conversion or enlargement, unless a special permit is granted by the B.Z.A. ←

ARTICLE 8.000 NONCONFORMITY

- 8.10 EXISTING BUILDINGS
- 8.20 NONCONFORMANCE

8.10 EXISTING BUILDINGS

8.11 This ordinance shall not apply to existing buildings or structures, nor to the existing use of any building or structure or of land, to the extent to which it is used at the time of first publication of notice of public hearing by the Planning Board of applicable provisions of this or any prior ordinance, but it shall apply to any change of use thereof and to any alteration of a building or structure when the same would amount to reconstruction, extension or structural change, and to any alteration of a building or structure to provide for its use for a purpose or in a manner substantially different from the use to which it was put before alteration, or for its use for the same purpose to a substantially greater extent.

8.12 Except as herein provided no building or structure or land shall be used and no building or other structure or part thereof shall be constructed, extended or structurally altered except in conformity with the State Building Code and with the provisions of this ordinance applying to the district in which such building, structure or land is located.

8.20 NONCONFORMANCE

8.21 Any nonconforming structure or use which existed at the time of the first notice of public hearing by the Planning Board of the applicable provisions of this or any prior ordinance or any amendment thereto may be continued or changed to be conforming, but when so changed to be conforming it shall not be made nonconforming again. *except by special permit issued by The B.Z.A.* ←

8.22 As provided in Section 6, Chapter 40A, G.L., permits for the change, extension or alteration of a pre-existing nonconforming structure or use may be granted in the following cases. Such a permit shall be granted only if the permit granting authority specified below finds that such change, extension, or alteration will not be substantially more detrimental to the neighborhood than the existing nonconforming use. *and meets the criteria of sect. 10.43.* ←

(a) In an Office, Business or Industrial district the Board of Zoning Appeal may issue a special permit for the <sup>change</sup> alteration or enlargement of a nonconforming structure or the enlargement (but not the alteration) of a nonconforming use, ~~provided any alteration or enlargement of such nonconforming use is not further in violation of the dimensional requirements in Article 5.000 or the off-street parking and loading requirements in Article 6.000 for the district in which such structure or use is located and provided such nonconforming structure or use not be increased in area or volume by more than twenty-five percent since it first began to be nonconforming.~~

~~(b) In an Office, Business or Industrial district the Board of Zoning Appeal may grant a special permit for the issuance of a certificate of occupancy for the occupancy of an existing building designed and built for non-residential use by any use permitted as of right in a Business or Industrial district in Article 5.000 of this ordinance, provided such new use will be carried out entirely within the existing building, and provided the off street parking and loading requirements in Article 6.000 for the district in which such building is located will not be further violated:~~

(c) In a Residence district the Board of Zoning Appeal may grant a special permit for the alteration or enlargement of a nonconforming structure ~~but not the alteration or enlargement of a nonconforming use~~, provided any enlargement or alteration of such nonconforming structure is not further in violation of the dimensional requirements in Article 5.000 or the off street parking and loading requirements in Article 6.000 for the district in which such structure is located and provided such nonconforming structure will not be increased in area or volume by more than twenty-five percent since it first began to be nonconforming.

(d) The Superintendent of Buildings may issue a building permit for the construction of a dormer or an addition to a nonconforming one or two family dwelling which will further violate the yard and height requirements of Article 5.000 in the following cases:

(1) A dormer or addition to the second story which does not extend beyond the existing first story of the structure.

(2) A dormer on the third story no longer than 15 feet which does not extend beyond the existing second story nor above the existing ridge line.

(e) Any other alteration or enlargement of a nonconforming structure or of a nonconforming use shall be by variance, *except as provides in sect 5.26.* ←

8.23

If a nonconforming structure or use shall have been destroyed or damaged by fire, explosion or other catastrophe to such an extent that the cost of restoration would be less than fifty percent of the replacement value of the building at the time of the catastrophe, such buildings or use may be rebuilt or restored and used again as previously. Such rebuilding or restoring shall not require a special permit and shall be completed within twelve months after such catastrophe. The building as restored shall not be greater in volume, lot coverage, or floor space, and, if the yard requirements are not met, shall not extend further into the required yards than the original nonconforming structure. If destroyed to such an extent that the cost of restoration would exceed fifty percent of such value, such building or use shall not be restored and may be replaced only by a conforming building or use.

8.24

A nonconforming use of a building or land which has been abandoned or not used for a period of two years shall not thereafter be returned to such

- 10.15 The Board may adopt from time to time such rules of practice and procedure as it may deem necessary to carry into effect the provisions of this ordinance, and shall keep minutes of its proceedings.
- 10.16 All appeals, petitions or applications to the Board shall be made in writing on forms prescribed by the Board, shall refer to the specific provision of the Zoning Ordinance involved, and shall exactly set forth the interpretation that is claimed, the use for which the special permit is sought, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be.
- 10.17 Every decision of the Board of Zoning Appeal shall be by resolution adopted by the affirmative vote of at least four members of the Board. Each resolution shall be filed with the documents pertaining thereto by case number in the office of the Superintendent of Buildings under one of the following headings: Interpretations, Special Permits, or Variances. Copies of each resolution shall be filed simultaneously in the offices of the City Clerk and the Planning Board. Each decision of the Board shall be made within seventy-five days after the date of the filing of an appeal, application or petition, except in regard to special permits, as provided in Section 10.42.

#### 10.20 APPEALS

- 10.21 Any party specified in Section 8, Chapter 40A, G.L., aggrieved by reason of his inability to obtain a permit or enforcement action or by any order, requirement, decision or determination made by the Superintendent of Buildings or other permit granting authority in the enforcement of this ordinance may appeal to the Board of Zoning Appeal. Within thirty days after the date of the order or decision which is being appealed, the aggrieved person may file with the City Clerk, who shall forthwith transmit copies thereof to the Building Superintendent and the Board of Zoning Appeal, a notice of appeal specifying the grounds thereof and shall thereupon pay a fee of fifty dollars to the City of Cambridge. The Superintendent of Buildings shall forthwith transmit to the Board of Zoning Appeal all documents and papers constituting the record of the case in which the appeal is taken.
- 10.22 Any person aggrieved by a decision of the Board of Zoning Appeal, whether or not previously a party to the proceeding, or any municipal officer or Board, may appeal to the Superior Court or the Land Court for Middlesex County; provided that such appeal is filed in said Court within twenty days after such decision is filed with the City Clerk.

#### 10.30 VARIANCES

- 10.31 A variance from the specific requirements of this ordinance, including variances for use, may be authorized by the Board of Zoning Appeal with respect to particular land or structures. Such variance shall be granted only in cases where the Board finds all of the following:

- (a) A literal enforcement of the provisions of this Ordinance would involve a substantial hardship, financial or otherwise, to the petitioner or appellant.
- (b) The hardship is owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located.
- (c) Desirable relief may be granted without either:
  - (1) substantial detriment to the public good; or
  - (2) nullifying or substantially derogating from the intent or purpose of this Ordinance.

10.32

In addition to considering the character and use of nearby buildings and land the Board, in determining its finding, shall take into account the number of persons residing or working in such buildings or upon such land, and the present and probable future traffic conditions.

10.33

A variance shall be granted only after a public hearing for which notice has been given by publication and posting as provided in Section 11, Chapter 40A, G.L. In any of the following cases notice of each application to the Board of Zoning Appeal for a variance shall be transmitted forthwith to the Planning Board which shall within twenty days of the receipt of such notice transmit to the Board of Zoning Appeal a report accompanied by any material, maps, or plans that will aid the latter Board in judging the application and in determining special conditions and safeguards. The Board of Zoning Appeal shall not render any decision on an application for a variance until said report has been received and considered, or until the twenty-day period has expired without receipt of the report, whichever is earlier.

- (a) Erection or alteration of a building to a height greater than that otherwise authorized under the provisions of this ordinance.
- (b) A change involving a nonconforming use of land in excess of twenty thousand square feet.
- (c) A change involving a nonconforming use of an existing building or buildings with a gross floor area in excess of two thousand square feet or a floor area ratio more than fifty percent greater than that permitted in the district in which it is located.
- (d) A change involving a commercial or industrial use on a lot not previously used for a commercial or industrial purpose.
- (e) Any other application for a variance with respect to which the Planning Board certified to the Board of Zoning Appeal not later than the date of the public hearing that the granting of such application would materially conflict with the planning principles and policies adopted by the Planning Board.

- 10.34 In granting a variance the Board may attach such conditions, safeguards, and limitations of time, use, and other development features, such as those listed in Section 10.44, as are determined necessary to protect the surrounding neighborhood including the continued existence of any particular structures, but excluding any conditions, safeguards or limitations based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner.
- 10.35 If the rights authorized by a variance are not exercised within one year of the date of granting of such variance, they shall lapse and may be reestablished only after notice and new hearing pursuant to this Section 10.30.

#### 10.40 SPECIAL PERMITS

- 10.41 Granting Authority. Special permits may be granted by the Board of Zoning Appeal or by the Planning Board as specified elsewhere in this Ordinance. Each of said boards shall be considered a "special permit granting authority."
- 10.42 Procedure. A special permit shall only be issued following a public hearing held within sixty-five days after filing of an application with the special permit granting authority, a copy of which shall be given to the City Clerk by the applicant. Notice of each application to the Board of Zoning Appeal for a special permit shall be transmitted forthwith to the Planning Board which shall, within thirty-five days of the receipt of such notice, transmit to the Board of Zoning Appeal a report accompanied by any material, maps, or plans that will aid the latter Board in judging the application and in determining special conditions and safeguards. The Board of Zoning appeal shall not render any decision on an application for a special permit until said report has been received and considered or until the thirty-five-day period has expired without receipt of the report, whichever is earlier. Failure by a special permit granting authority to take final action upon an application for a special permit within ninety days following the date of public hearing on said application shall be deemed to be a grant of the permit applied for.
- 10.43 Criteria. Special permits will normally be granted where specific provisions of this Ordinance are met, except when particulars of the location or use, not generally true of the district or of the uses permitted in it, would cause granting of such permit to be to the detriment of the public interest because:
- (a) It appears that requirements of this Ordinance cannot or will not be met, or
  - (b) traffic generated or patterns of access or egress would cause congestion, hazard, or substantial change in established neighborhood character, or
  - (c) the continued operation of or the development of adjacent uses as permitted in the Zoning Ordinance would be adversely affected by the nature of the proposed use, or

- (d) nuisance or hazard would be created to the detriment of the health, safety and/or welfare of the occupants of the proposed use or the citizens of the City, or
- (e) for other reasons, the proposed use would impair the integrity of the district or adjoining district, or otherwise derogate from the intent and purpose of this Ordinance.

## 10.44

Conditions. In acting upon special permits the special permit granting authority shall take into account the general purpose and intent of this ordinance and, in order to preserve community values, may impose conditions and safeguards deemed necessary to protect the surrounding neighborhood, in addition to the applicable requirements of this ordinance, such as, but not limited to, the following:

- (a) Front, side, or rear yards greater than the minimum required by this ordinance.
- (b) Screening of parking areas or other parts of the premises from adjoining premises or from the street by specified walls, fences, planting, or other devices.
- (c) Modification of the exterior features or appearance of the structure.
- (d) Limitation of size, number of occupants, method of time of operation, or extent of facilities.
- (e) Regulation of number, design, and location of access drives or other traffic features.
- (f) Requirement of off-street parking or other special features beyond the minimum required by this or other applicable codes or regulations.
- (g) Control of the number, location, size and lighting of signs.

## 10.45

Expiration. A special permit granted under this section shall lapse within two years, including such time required to pursue or await the determination of an appeal to the Superior Court or to the Land Court as provided in Section 10.22 from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction was not begun by such date except for good cause.

## 10.50 REPETITIVE PETITIONS

## 10.51

No appeal, application or petition which has been unfavorably acted upon by the Board of Zoning Appeal or Planning Board shall be acted favorably upon within two years after the date of final unfavorable action unless:



# City of Cambridge

2.

IN CITY COUNCIL  
March 26, 1979

COUNCILLOR PREUSSER

ORDERED:

That the City Manager be requested to instruct the Community Development Department, the Building Department and the Board of Zoning Appeals to discuss the enclosed proposed changes to the Zoning Ordinance which would allow the B.Z.A. to treat nonconforming use changes more flexibly by a "special permit" approach which allows each case to be treated on its own merits, and be it further

ORDERED:

That a petition to amend the Zoning Ordinance as such be forwarded to the City Council for consideration in not more than four weeks time.

In City Council March 26, 1979  
Adopted by the affirmative vote of 7 members.  
Attest: Paul E. Healy, City Clerk

A true copy,  
ATTEST:

COUNCILLOR DUEHAY HAS REQUESTED TO BE RECORDED IN THE NEGATIVE

Order #2

F-145

C. Preusser re: proposed changes to the Zoning Ordinance allowing the B.Z.A. to treat non-conforming use changes more flexibly by a "special permit" approach.

In City Council,  
March 26, 1979

*CP/A*

*3/26/79*

*Order Adopted  
by THE BOARD*

*Record E. Puchay in  
the negative-*