

**BROOKLINE PLANNING BOARD**  
**Section 800**

~~Proposed deleted items~~      *Proposed changes*

**Reasons for the proposed changes**

The proposed changes clarify this section allowing for the lawful continuance of nonconforming uses, lots, and structures.

The proposed amendment clarifies that all dwellings in Brookline must have a state approved septic system.

The proposed changes eliminate the ambiguity regarding the application of setbacks to nonconforming buildings or adding buildings on nonconforming lots. Setbacks still apply to nonconforming lots and remain subject to relief from the Zoning Board of Adjustment.

The proposed changes remove the diagram called “**Expansions of structures with nonconforming setbacks**” and replaces it with a more understandable text. The proposed changes also separate sections so each has a single topic and removes overlap. References to mergers of nonconforming lots was removed.

Amendment No. 5

**800.00      NONCONFORMING USES, ~~STRUCTURES AND LOTS, AND STRUCTURES~~**

The purpose of this section is to allow for the lawful continuance of nonconforming uses, structures and lots, in accordance with the criteria outlined below and to allow for a reasonable level of alteration, expansion or change to occur by special exception when it can be demonstrated that the proposed alteration, expansion or change will not change the nature of the use, unduly impact the neighborhood or provide inadequate subsurface disposal of waste.

**800.01      Nonconforming Uses**

- a. Any nonconforming use may continue in its present use, however, it shall not be changed to another nonconforming use.
- b. Whenever a nonconforming use has been intentionally discontinued or abandoned for a period of one year the use shall not be reestablished.
- c. ~~Except for proposal “B” (see diagram in section 800.03),~~ Any alteration, expansion or change of a nonconforming use ~~or structure~~ shall ~~only~~ be permitted by special exception by the Zoning Board of Adjustment if it finds that:
  1. The proposed alteration, expansion or change will not change the nature and purpose of the ~~original~~ *present* use; and
  2. The proposed alteration, expansion or change would involve no substantially different effect on the neighborhood; ~~and~~
  3. ~~Any increase in heated living space which, in the judgment of the Zoning Board of Adjustment, is capable of increasing the number of bedrooms for a noneonforming dwelling or lot, may require that the septic system be approved by the NH Division of Water Supply and Pollution Control and the Town of Brookline in accordance with the provisions of RSA 485 A:38 and the Town’s regulations for the number of bedrooms currently in the home or proposed for the home.~~

## 800.02 Nonconforming Lots

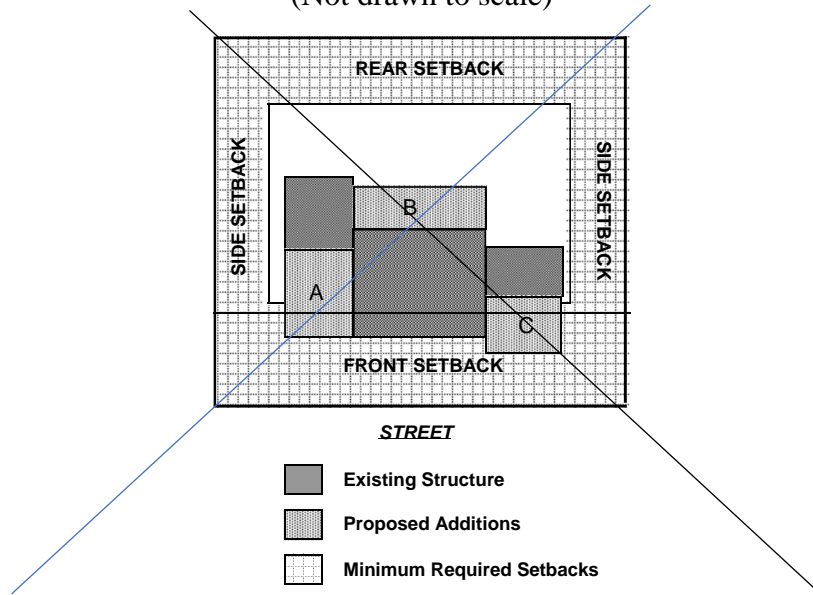
- a. A nonconforming lot that has been developed with a structure may continue in its present use; however, any alteration or expansion shall comply with Sections 800.01e *and* **800.03**.
- b. A nonconforming lot which is recorded and taxed as a lot of record at the time of passage of this Ordinance *and, pursuant to Zoning Ordinance Section 900*, may be used for any permitted use in the district in which it is located. ~~Every attempt shall be made to conform to the lot size/setback requirements of the zone.~~
- e. ~~Where two (2) or more nonconforming, undersized, lots abut and are under common ownership, prior to the issuance of a building permit the parcels shall be merged into one lot and shall comply with the zoning requirements to the best of their ability. Every attempt shall be made to conform to the lot size/setback requirements of the zone.~~
- c. Any New septic systems or any changes to existing septic systems ~~on nonconforming lots~~ must comply with the all local and state requirements for septic systems to the maximum extent possible. *NH Division of Water Supply and Pollution Control and the Town of Brookline in accordance with the provisions of RSA 485-A:38 and the Town of Brookline's Zoning Ordinance Section 303.02.*

## 800.03 Nonconforming Structures

- a. Any lawful nonconforming structure existing at the time of adoption of this Ordinance, may be occupied, operated and maintained.; however, any alteration, expansion or change of the structure that further aggravates a front, side or rear setback shall only be permitted by special exception in accordance with Section 800.01 e and the diagram below.
- b. Any alteration, expansion, or change of a structure which already extends into the front, side, or rear setbacks required for the zone shall be permitted by special exception by the Zoning Board of Adjustment if it finds that:
  1. The proposed alteration, expansion, or change will not change the nature and purpose of the present use; and
  2. The proposed alteration, expansion, or change would involve no substantially different effect on the neighborhood; and
  3. The proposed alteration, expansion, or change would extend no farther into the setback than that portion of the structure which already resides in that setback.
- c. Any development which would create a new extension into a setback shall require a variance from the Zoning Board of Adjustment.
- d. Accessory structures which can meet the setback requirements do not require a special exception or variance.
- e. Any increase in the number of bedrooms requires a septic system that complies with the NH Division of Water Supply and Pollution Control and the Town of Brookline in accordance with the provisions of RSA 485-A:38 and the Town of Brookline's Zoning Ordinance Section 303.02.

### Expansions of structures with nonconforming setbacks

(Not drawn to scale)



**Explanation:** Proposal "A" requires a special exception;  
Proposal "B" requires no action by the Board of Adjustment;  
Proposal "C" requires a grant of variance by the Board of Adjustment, provided, however, that in addition to meeting the legal standard for a variance, the proposal also meets the general criteria for a special exception found in this Ordinance;  
Accessory structures that can meet the setbacks do not require a special exception.