

DELETIONS IN [BRACKETS AND UNDERLINED] / ADDITIONS IN *ITALICS AND BOLD*

**EXISTING SECTION VII – NONCONFORMING USES, BUILDINGS AND LOTS**

Any lawful use of a building lot existing as of September 1, 2010 may be continued subject to the following conditions:

1. Except as hereinafter provided in this Section, a nonconforming use shall not be enlarged or extended.
2. A nonconforming use may not be changed to another nonconforming use.
3. If any nonconforming building or structure is destroyed by fire, flood or other casualty, or is intentionally razed or demolished, it may be restored or replaced by a building or structure having the same nonconforming features as the building or structure destroyed or razed [provided such restoration or replacement is started within one year of such razing, demolition or destruction and diligently pursued to completion.]

**Note – this is an illegal provision – see CGS on page 4.**

4. [A nonconforming use which ceases for any reason for a continuous period of more than one (1) year, or is changed to a conforming use, shall not thereafter resume.]

**Note – this is an illegal provision – see CGS on page 4.**

5. Any permitted use may be made of, and any permitted building may be constructed on, a nonconforming lot provided that as of August 2, 1980 and continuously thereafter the legal owners of record of the nonconforming lot did not, at any time during the ownership of the nonconforming lot, own any adjoining or contiguous lot. When lots are joined, for the purposes of complying with the Zoning Regulations, the lots need [not] to be combined into one lot on the land records. [The interior lot lines, where the lots abut, have no zoning significance relative to setback requirements for any building located on the so joined property.]

**Need to be combined otherwise we have created a non-conformity – See Section III of BPBCA Zoning Regulations – goes against that section.**

6. The owner of two (2) or more adjoining or contiguous lots may, upon approval by the Board of Governors of the Association, re-subdivide those nonconforming lots to create one (1) or more conforming lots.

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7. Except as set forth in paragraph 8, a nonconforming building shall not be enlarged or extended, vertically or horizontally, unless:
8. Such extension or enlargement complies with the setback requirements of these regulations regardless of the existing setback lines of the nonconforming building ***except as noted below***, and
9. Such extension or enlargement complies with all other provisions of these regulations pertaining to the type of building being extended or enlarged as relates to height, dimensions and number of floors.
10. Any open portion of a nonconforming dwelling having a roof and existing as of February 5, 1991 may be enclosed so to form a portion of the interior of the dwelling.
11. The roofline immediately over actual occupied area above grade, not including accessory unoccupied areas, in a nonconforming dwelling may be changed, providing the overall height of the structure is not increased ***except as noted below***.
12. ***Nonconforming structures exceptions.***
  - a. ***No nonconforming dwelling shall be enlarged or extended unless the enlargement or extension conforms to the requirements of the district in which it is situated.***
  - b. ***EXCLUDED FROM THIS PROHIBITION ARE:***
    1. ***Additions of a second story to one-story single family dwellings.***
    2. ***Conversions of single-family one-and-one-half story dwellings to two-story dwellings, either by means of dormers or upward extensions of existing sidewalls.***
    3. ***Conversions to two stories of one-story appendages to two-story single-family dwellings.***
    4. ***Construction of an addition that fills in a section of the house when two adjacent exterior walls are already non-conforming.***



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- 5. Construction of an addition that extends the nonconformity as long as the extension does not exceed twenty percent of the existing structure and does not extend into the front or rear yard setback.***

***c. NONE OF THE FOREGOING ADDITIONS, EXTENSIONS, OR CONVERSIONS SHALL:***

- 1. Extend beyond the perimeters of the existing buildings except as noted in #4 or #5 above.***
- 2. Exceed the vertical projection limits specified elsewhere in these regulations.***
- 3. Alter the single-family status of the dwellings.***
- 4. Result in a separation of less than 15 feet from the sidewalls of any other dwelling.***
- 5. Result in the nonconformity being constructed no closer than five feet from the property line.***
- 6. Result in construction that exceeds the coverage limit thirty-five (35) percent of all structures on the property.***

***d. Nothing shall prevent the construction of additions to single family detached residential dwellings provided that the following conditions are met:***

- 1. No lot within the scope of these provisions may contain more than one dwelling.***
- 2. The dwellings are used solely as private residences, except for approved "Home Occupations" and the proposed additions shall likewise be designed for such use. (For purposes of this regulation, single-story, accessory attached and detached garages shall be considered residential additions.)***

***e. All application for construction under this section will require an A-2 survey to demonstrate the exact location of the existing structure, the proposed addition(s), and the location of the closest neighboring structure(s).***

**NOTE - NONCONFORMING BUILDING REGULATIONS ARE FROM THE EAST LYME ZONING REGULATIONS WITH MODIFICATIONS**

***Please note a portion of Connecticut General Statutes 8-2 reads as follows:***

***“Such regulations shall not prohibit the continuance of any nonconforming use, building or structure existing at the time of the adoption of such regulations or require a special permit or special exception for any such continuance. Such regulations shall not provide for the termination of any nonconforming use solely as a result of nonuse for a specified period of time without regard to the intent of the property owner to maintain that use. Such regulations shall not terminate or deem abandoned a nonconforming use, building or structure unless the property owner of such use, building or structure voluntarily discontinues such use, building or structure and such discontinuance is accompanied by an intent to not reestablish such use, building or structure. The demolition or deconstruction of a nonconforming use, building or structure shall not by itself be evidence of such property owner's intent to not reestablish such use, building or structure.”***

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**13. NONCONFORMING LOTS (NOTE – EXISTING SIDE YARD IS 15 FEET)**

***Lots 79 feet or less in width: In the case of any lot 79 feet or less in width, the minimum combined width of both side yards and the minimum width of the narrowest side yard shall be respectively as follows;***

LOT WIDTH	COMBINED WIDTH OF SIDE YARDS	MINIMUM WIDTH OF NARROWEST SIDE YARD
UNDER 40 feet	16 feet	8 feet
40 feet to 49 feet	18 feet	8 feet
50 feet to 59 feet	20 feet	10 feet
60 feet to 69 feet	24 feet	12 feet
70 feet to 79 feet	28 feet	14 feet

**Note - Front yard is defined in the existing regulations.**

**Front Lot Line. – The lot line on the street address of a lot. In cases when a property abuts multiple streets, the street address shall be the same as the front entrance of the single-family dwelling.**



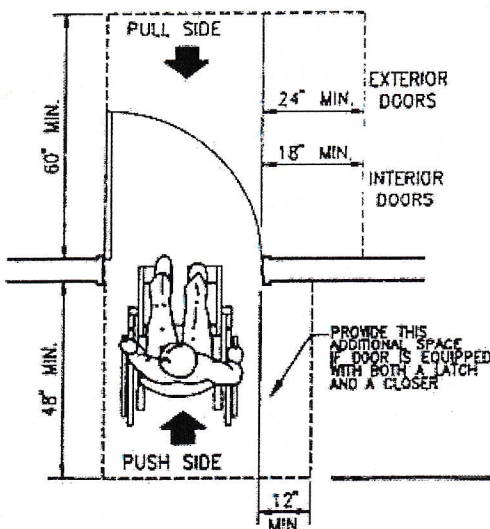
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**14. Landings and Stairs Within the Setback Areas REMOVE FROM SECTION V – 3 AND ADD TO NON-CONFORMING SECTION, MODIFY AS NOTED BELOW TO COMPLY WITH ADA REQUIREMENTS.**

Exterior landings and stairways to exterior doors which are constructed within the setback areas as defined in this section shall be consistent with the following requirements, and no further deviation from such setback areas shall be permitted unless expressly authorized by a variance granted by the Zoning Board of Appeals:

- Landings *in the setback area* shall not exceed the dimensions of four [ (4) feet by four (4) feet ] *six (6) feet by six (6) feet.*
- Stairways *and landings* shall not extend into a side or rear setback area [more than three (3) feet ] *less than five (5) feet* from the property line, nor into a front setback area [more than six (6) feet ] *less than five (5) feet from the property line.*
- The coverage of any roof constructed above a landing shall not exceed the dimensions of the landing, and the landing beneath a roof shall not subsequently be enclosed.
- No roof or other overhead structure shall be constructed above the stairway.

**Note - BUILDING CODE - MINIMUM REQUIREMENTS** Top landings at minimum should be at least 60" X 60" if there is an outswinging door, with at least a 12" to 24" of "elbow room" space provided off the door's handle side, particularly for a person using mobility equipment. These dimensions give enough room for a person to move off to the side while opening the door without having to back up to get out of the way of its swing.



## **Existing regulation pertaining to construction activities**

**Section IV – 12. Construction Activities** – No construction or construction related activities including, but not limited to, land clearing, excavation, the installation of footings or foundations, the erection of structures, and the siding or roofing of such structures, shall commence prior to 8:00 AM nor conclude later than 6:00 PM on any day.

## **For consideration**

**Section IV – 12. Construction Activities** – No construction or construction related activities including, but not limited to, land clearing, excavation, the installation of footings or foundations, the erection of structures, and the siding or roofing of such structures, shall commence prior to 8:00 AM nor conclude later than 6:00 PM on any day. ***During the period between November 1<sup>st</sup> and April 1<sup>st</sup> construction may commence at 7:00 am Monday through Friday. Saturdays and Sundays hours are still 8:00 AM to 6:00 PM.***

***Intent – To promote more of the construction activities to be completed in the winter months. An extra five extra hours a week per employee can add up fast.***

***With daylight time changes, you gain an hour in the morning but lose the time in the afternoon.***



**MINIMUM SQUARE FOOTAGE FOR DWELLING UNITS**

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**SECTION V – DIMENSIONAL REQUIREMENTS**

**1. Dwellings** – No dwelling shall be constructed within the limits of the Association unless it meets the following requirements:

- a. The lot on which it is constructed must have an area of at least 8,000 square feet.
- b. The lot on which it is constructed must have at least sixty (60) feet of frontage on a street.
- c. It shall have a maximum building height (as defined in these regulations) not to exceed twenty-seven (27) feet *at mean roof height*.
- d. BUILDING HIEGHT REGULATION FOR STRUCTURES IN AREAS OF SPECIAL FLOOD HAZARD OR COASTAL HIGH HAZARD AREAS

When a proposed structure that is in a Special Flood Hazard or Coastal High Hazard Areas is required to have the lowest floor elevated to one (1.0) foot above the base flood elevation as determined by the East Lyme Building Official, the following exceptions apply to the building height:

The maximum height of any building structure shall be twenty-five feet, measured from the base flood elevation to the mean roof height. In no case shall any peak or other building feature exceed thirty-six feet when measured from the base flood elevation to that roof peak or other building feature, except chimneys may be of such height as regulated by the building code as amended time to time.

- e. It shall have no more than two (2) floors of living space (above grade).
- f. [It shall have a net floor area of not less than 1,200 square feet.]

**NOTE - MINIMUM SQUARE FOOTAGE AREA NOT PERMITTED**

- g. The dwelling, in combination with all accessory buildings, pool complexes and other structures shall not occupy more than thirty-five (35%) percent of the total area of the lot, provided that steps accessing a dwelling shall not be considered for the purposes of this limitation. Terraces and patios as defined in these regulations shall not be considered as structures for determining lot coverage. The dwelling shall be located on the lot so as to maintain the following setbacks from the street lines:



§ 4.31 Size of Structure; Maximum and Minimum Requirements

Most zoning ordinances define "building" and "structure," and the latter term covers the former. Bulk regulations governing "size of buildings and other structures" are specifically authorized by the enabling statute. Whether a structure is a building as defined in the ordinance depends upon the facts and circumstances of each case and the definition in the regulations.<sup>1</sup> While maximum size requirements for buildings and structures would be valid in almost any conceivable situation, since it is directly related to overcrowding of land with collateral effects on the public, there are apparently no Connecticut cases on this issue, perhaps for that reason. Minimum floor or building size requirements, while technically allowed by section 8-2 of the General Statutes, are illegal in some cases. In *Builders Service Corporation, Inc. v. Planning and Zoning Commission of Town of East Hampton*,<sup>2</sup> it was held that in the absence of any evidence showing a rational relationship between the minimum floor area requirements in the zoning regulations and any of the legitimate objectives of zoning in section 8-2, the minimum area requirement was illegal. The opinion recognized that section 8-2 authorized the enactment of minimum floor area regulations,<sup>3</sup> but concluded that since zoning regulations must be based upon the police power, that if there was no rational basis between the regulation and protecting public health, safety and welfare then the regulation was illegal. After analyzing the regulation in question, the court concluded that it had no relationship to promoting public health, conserving the value of buildings, and did not promote affordable housing opportunities for all citizens of the municipality. The opinion also indicates that different minimum building size requirements in the zoning districts of the town would be illegal.<sup>4</sup> The court followed a similar decision of the New Jersey Supreme Court<sup>5</sup> which also held that minimum building sizes in single-family zones were invalid because unrelated to the purposes of zoning.

Where other ordinances or regulations have higher standards than zoning ordinances, then the provisions of the other regulations control as to setbacks, areas of open space, building height, number of stores and area of the lot to remain unoccupied.<sup>6</sup>

§ 4.32 Floor Area Ratio Provisions

Some zoning regulations contain floor area ratio requirements, which are an additional restriction controlling the maximum size of buildings.

§ 4.31

1. *Middlesex Theatre, Inc. v. Commissioner of State Police*, 128 Conn. 20, 23, 20 A.2d 412, 413 (1941).

2. 208 Conn. 267, 306, 545 A.2d 530, 550 (1988).

3. *Id.* at 278, 545 A.2d at 536.

4. *Id.* at 295, 296, 545 A.2d at 545.

5. *Home Builders League of South Jersey, Inc. v. Berlin Township*, 81 N.J. 127, 405 A.2d 381 (1979).

6. C.G.S.A. § 8-13.

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## **EXISTING REGULATIONS**

### **Section I Definitions**

Accessory Buildings. – A detached subordinate building located on the same lot with the principal building and devoted to an accessory use, but not used for human habitation. **OK**

Accessory Use. – A use subordinate to and customarily incidental to the principal use of a lot or building and on the same lot. **OK**

Building. – Any structure with walls and a roof securely affixed to the land and entirely separated on all sides from any other structure and which is designed for the shelter, enclosure, or protection of persons, animals or chattels. **OK**

#### Garage.

a. A structure designed principally for the shelter, enclosure or protection of vehicles.

b. Attached Garage. – A garage that is part of a dwelling by being physically connected to it by means of a permanent structural connection other than pavement or fences. **OK**

c. Detached Garage. – An accessory building which is not physically connected to a dwelling by means of any permanent structural connection other than pavement or fences. ***Any accessory structure over 200 square feet shall be considered a garage.***

Gazebo. An open accessory building not exceeding 144 square feet with a roof not exceeding 12 feet in height. **OK**

Pool Cabana. An accessory building designed for use or used in connection with a pool. ***Pool cabanas shall have a maximum size of 200 square feet and shall not exceed 16 feet in height.***

Shed. An accessory building designated for the shelter, enclosure or protection of tools, recreation equipment, swimming pool equipment, lawn maintenance equipment and the like.

## **SECTION IV – GENERAL REGULATIONS**

- 9. Accessory Buildings** – No accessory building may be used as a dwelling.  
( Dwelling - a house, apartment, or other place of residence.)



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## **SECTION V – DIMENSIONAL REQUIREMENTS**

**2. Accessory Buildings** – Except as otherwise expressly provided in these regulations, no more than two accessory buildings, [of which not more than one may be a garage and not more than one may be a shed,] ***of which can be a combination of two structures (a garage, a shed, a gazebo, or a pool cabana)*** and shall be constructed on any buildable lot within the limits of the association, provided that such accessory buildings must meet the following requirements:

### **a. Detached Garage**

1. It may not be constructed before the principal building has been lawfully constructed on the lot;
2. It shall have a maximum building height of twenty (20) feet; **(at mean roof height)**
3. It shall occupy no more than ten (10) percent of the total area of the lot;
4. It shall have only one floor above the garage floor and that floor ***space*** is to be used for storage only.
5. It shall be located on the lot not less than ten feet from the dwelling or any accessory building at the point at which the two structures are closest.
6. It shall contain no toilets facilities.
7. The conversion of a detached garage to an attached garage shall require a zoning permit.
8. It shall be located on the lot so as to maintain the following setbacks from the lot lines:

**On A Beachfront Lot** - Twenty-five (25) feet from the lot line on the bank of the beach or the beach wall; Fifteen (15) feet from the rear lot line along the street; Fifteen (15) feet from the side lot lines.