

#### Subdivision IV. - Dimensional Waivers

##### Sec. 134-234. - Dimensional waiver described.

Waivers providing for relief from the strict application of certain of the dimensional requirements of the zoning code are available for the following situations:

- (1) Additions to, or renovation of existing single-family development constructed prior to 1980. These waivers will be reviewed and approved or denied administratively by the director of the planning, zoning and building department.
- (2) Modifications to landmarked structures or properties. These waivers will be reviewed and approved or denied by the landmarks preservation commission and ratified by the town council.

(Ord. No. 8-07, § 2, 5-8-07)

##### Sec. 134-235. - General conditions applicable to all dimensional waivers.

- (a) Approval of the waiver will not compromise traffic safety.
- (b) Approval of the waiver will not compromise fire safety.
- (c) There shall be no objection of any abutting property owner(s).

(Ord. No. 8-07, § 2, 5-8-07; Ord. No. 26-10, § 11, 12-15-10)

**Editor's note—** Ord. No. 8-07, § 2, adopted May 8, 2007, enacted provisions intended for use as subsections 1. and 2. To preserve the style of this Code, and at the discretion of the editor, said provisions have been redesignated as subsections (a) and (b).

##### Sec. 134-236. - Dimensional waivers for existing single-family development constructed prior to 1980, and which have not been landmarked.

(a) *Specific conditions for approval of a waiver of required minimum side yard setback.*

- (1) For a single-story structure, the resulting side yard setback is not less than any existing nonconforming side yard setback of the principal structure located on property immediately abutting the side yard for which the waiver is requested.
- (2) For a two-story structure, the resulting side yard setback is not less than:
  - a. Any existing nonconforming side yard setback of the single-story principal structure located on property immediately abutting the side yard for which the waiver is requested, plus two and one-half feet; or
  - b. Any existing nonconforming side yard setback of any two-story principal structure located on property immediately abutting the side yard for

which the waiver is requested.

(3) In no event shall the side yard be less than seven and one-half feet in the R-B district and not less than ten feet in any other residential district.

(b) *Specific conditions for approval of a waiver of required minimum rear yard setback.*

(1) For a single-story structure, the resulting rear yard setback is not less than any existing nonconforming rear yard setback of the principal structure located on property immediately abutting the rear yard for which the waiver is requested.

(2) For a two-story structure, the resulting rear yard setback is not less than:

- a. Any existing nonconforming rear yard setback of any single-story principal structure located on property immediately abutting the rear yard for which the waiver is requested, plus five feet; or
- b. Any existing nonconforming rear yard setback of any two-story principal structure located on property immediately abutting the rear yard for which the waiver is requested.

(3) In no event shall the rear yard be less than seven and one-half feet in the R-B district and not less than ten feet in any other residential district.

(c) *Specific conditions for approval of a waiver of minimum front yard setback for entry features.*

(1) The waiver shall be only for a single-story entry feature which meets the following conditions:

- a. Such feature shall not exceed 25 percent of the total dimension of the building wall from which such entry feature projects (measured parallel to said building wall) but shall not be required to be less than ten feet wide.
- b. The measurement of the projection from the building wall shall not be more than the width of the entry feature.

(2) The resulting front yard setback is not less than the lesser of any existing nonconforming front yard setback of the principal structures located on property immediately abutting either side of the property for which the waiver is requested. In no case, however, shall the front yard setback be less than 20 feet.

(d) *Notice to abutting property owners; review by director.*

(1) Abutting property owners shall be notified by certified mail to their respective addresses, as shown on the county property appraiser's tax records, not less than 15 calendar days prior to a decision by the director to approve or deny an application for a dimensional waiver.

(2) Said notification shall describe the nature and extent of the requested waiver, the location of the property for which the waiver is requested, and the date by which the application will be acted upon by the director.

(3) The director or his/her designee shall approve, approve with modifications or deny the application for a waiver within 30 days of receipt of the application and shall notify the applicant and abutting property owner(s) in writing by certified mail within seven days of the decision.

(4) The applicant or abutting property owner(s) shall have 30 days, from the date of the issuance of the certified letter notifying the applicant of the director's decision, to file an appeal with the town council as set forth under sections 134-141—134-145.

(5) Effective date of approval of a waiver. The approval of a waiver by the director or his/her designee shall become effective upon the expiration of

the appeal period as outlined in section 134-145.

(Ord. No. 8-07, § 2, 5-8-07)

**Editor's note**— Ord. No. 8-07, § 2, adopted May 8, 2007, enacted provisions intended for use as subsections 1.—4. To preserve the style of this Code, and at the discretion of the editor, said provisions have been redesignated as subsections (a)—(d).

Sec. 134-237. - Dimensional waivers for landmark properties.

The purpose and intent of this section is to provide owners of landmark properties and structures with flexibility in the rehabilitation, expansion, and redevelopment of buildings and structures within the town. This Code establishes general standards for the location, design, scale, and massing of buildings and structures which do not always fit the unique conditions and circumstances of a built-out community that includes many buildings of distinctive individual and cumulative design and character. This section establishes substantive criteria for the review and approval of development on landmarked properties when the property owner desires to use conditional dimensional waivers to the strict application of the underlying zoning district regulations.

- (1) *Application of dimensional waivers for landmark properties.* The dimensional waivers of this section may be applied to applications that seek to deviate from the strict application of the underlying zoning district regulations, except that these standards shall not be applied in commercial zoning districts. The dimensional waivers of this section shall be applied in addition to the standards for approval of certificates of appropriateness that are set out in chapter 54. It is not the intent of this section that the consideration of a dimensional waiver supercedes the criteria for granting a certificate of appropriateness.
- (2) *Description of conditional dimensional waivers available for landmark structures.* The landmark preservation commission may apply the following conditional dimensional waivers in the alternative to the strict application of the underlying zoning district regulations:
  - a. *Reduced setbacks for expansion of landmark buildings.* Reduced side and rear yard setbacks may be approved for the expansion of landmark buildings, or the addition of permissible new buildings, on a lot which contains a landmark building if all of the following are demonstrated:
    1. The setback does not violate any of the following conditions:

*Front:* Reduction can be up to 90 percent of underlying zoning district requirement; provided, however that the front yard setback shall not be less than the lesser of the existing front yard setbacks of the principal structures on the lots immediately abutting the side property lines of the lot for which the waiver is being requested.

*Side:* Reduction can be up to 65 percent of underlying zoning district requirement; provided, however, that the side yard setback shall not be less than five feet.

*Side street:* Reduction can be up to 65 percent of underlying zoning district requirement.

*Rear:* Reduction does not result in a rear yard setback of less than seven and one-half feet.

*Rear street:* Reduction does not result in a rear street yard setback of less than 20 feet.

2. The proposed portion of building or structure between the required setback and the reduced setback does not compromise the historic character of the landmark building, due to one or more of the following:
  - A. The architecture and design of the additional building or structure between the required setback and the reduced setback:
    - i. Is complimentary to the architecture of the landmark building, while neither replicating the architecture nor fundamentally departing from it;
    - ii. Is such that the additional building or structure appears subordinate to those parts of the landmark building that materially contribute to its landmark status;
    - iii. Does not block public views of those parts of the landmarked building that materially contribute to its landmark status; and
    - iv. Allows for future removal of the additional building or structure and restoration of the landmark building to its existing design.
  - B. The volume and footprint of the portion of the building or structure between the required setback and the reduced setback is de minimus, and the character of the proposed building or structure does not tend to distract the eye from the principal landmark building.
  - C. The portion of the additional building or structure between the required setback and the reduced setback is completely screened from view from public rights-of-way by existing topography, existing walls, and/or existing landscaping that do not interfere with the historic character of the landmark building.
  - D. Reasonable alternative designs that are permitted by the strict requirements of the underlying zoning district and result in the same cubic content ratio would detract from the landmark character of the building.
- b. *Reduced setbacks for restoration/replacement of documented portion of a landmark building that has been destroyed.* A reduction of up to 100 percent of any required setback may be approved if it is demonstrated that the proposed development between the required setback and the reduced setback area enhances the historic character of the landmark building by restoring or replacing a portion of the original building or structure that had been destroyed or demolished.
- c. *Increasing maximum height of driveway gates.* An increase in the maximum height of driveway gates may be approved if it is demonstrated that:
  1. The proposed driveway gates will restore or replace gates that contribute to the character of landmark building;
  2. The proposed driveway gates are located no closer to the street than the original driveway gates; and
  3. The proposed driveway gates will not compromise traffic safety.
- d. *Decreasing minimum setback of driveway gates.* A decrease in the minimum setback of driveway gates may be approved if it is demonstrated that:

1. The proposed driveway gates will restore or replace gates that contribute to the character of landmark building;
  2. The proposed driveway gates are located no closer to the street than the original driveway gates; and
  3. The proposed driveway gates are designed and located in such a manner that they will not compromise traffic safety.
- e. *Decreasing landscaped open space for restoration or renovation of nonconforming landmark buildings.* A decrease in the minimum landscaped open space may be approved in order to permit landmark buildings that do not conform to the minimum landscaped open space requirements to be renovated, reconstructed, or restored, in order to either preserve the building as it existed when it was landmark; or in conjunction with restoration that involves the application of subsection b.
- f. *Decreasing landscaped open space for expansion of landmarked buildings which are used for an important public purpose.* A decrease of up to 15 percent of the minimum required landscaped open space may be approved if it is demonstrated that:
1. The reduction is necessary to permit the necessary expansion of a landmark building which serves an important public purpose; and
  2. Reasonable alternative designs that are otherwise permitted by the strict requirements of the underlying zoning district, and which would result in the same cubic content ratio, would detract from the landmark character of the building.
- (3) *Landmarks preservation commission action; town council ratification of commission action on applications involving dimensional waivers.*
- a. *Decisions to be placed on town council consent agenda.* Decisions of the landmark preservation commission to approve, approve with conditions, or deny applications for development approval involving dimensional waivers shall be placed on the consent agenda of the first available meeting of the town council after the decision.
- b. *Removal of decisions from consent agenda.* Decisions that are placed on the town council consent agenda pursuant to subsection a., may be removed from the consent agenda and placed on the regular agenda at the request of a member of the town council.

(Ord. No. 8-07, § 2, 5-8-07)

Secs. 134-238—134-260. - Reserved.