

Received: 7/21/2016

New Bedford Zoning Board of Appeals

Re: Anthony R. DeCosta, 1861 Shawmut Ave., New Bedford

Introduction

This is an appeal from the issuance of a cease and desist order by the Commissioner of Buildings to Anthony R. DeCosta on May 18, 2016. That order requires Mr. DeCosta to shut down the operation of his business which has been operating in the industrial zone for more than fifty years. For the reasons set forth below the cease and desist order should be overturned.

Background

The property at 1861 Shawmut Avenue, New Bedford is owned by Anthony DeCosta. It is used by his business, A-1 Asphalt. That business has been operating on that property since 1963 when the company was started by Mr. DeCosta's father, Charles DeCosta, Sr.

A-1 Asphalt is a contractor, and uses the property primarily as its contractor's yard. It began operating its asphalt paving business from this property in 1963. The company contracts to build new paved surfaces (driveways, parking lots, roads etc.), and also to replace existing paved surfaces. In both cases the project will involve excavating the site whether it is previously paved or not, and bringing the excavated materials to the yard to be stockpiled. That material is then reused either as fill, base, or aggregate depending on the needs of that or other jobs. A-1's vehicles and equipment are kept at the yard.

Preparing the material for use involves screening the materials to segregate soils, stone and broken asphalt. The broken asphalt and the larger stones are crushed so that they can be used as base material. A-1 has been crushing stone and asphalt at its yard since the early 1990's.

The company does not provide its own hot asphalt, and it does not store hot asphalt at the yard. The hot asphalt is purchased from batch asphalt companies in Acushnet and Rochester.

Since 2001, A-1 has been a subcontractor on projects involving the demolition and reconstruction of various public works, including the Purchase Street railroad bridge, several

projects at the New Bedford Airport , and Faunce Corner Road reconstruction. Those projects have involved removing, transporting, screening, crushing and redelivering materials to those and other project sites for use as loam, fill or aggregate. See Affidavit, Exhibit "A."

Satellite photographs of the property, taken over a twenty year period, show that, aside from shifting and repositioning of piles of materials, the nature of the property has not changed over the years. See Photographs, Exhibit "B."

The Cease and Desist Order

The May 18, 2016, Cease and Desist Order from the Commissioner of Buildings, Danny Romanowicz, alleges specific violations with regard to use of the property, as follows:

- 1(a) "you have failed to obtain a building permit for any structures associated with, or the operation of A-1 Asphalt Co., Inc. . . . "
- 1(b) "you have failed to obtain the required permit for a contractor's yard . . . "
- (2) "The rock and concrete crushing operations and the crushing and recycling of other materials are not permitted activities in a contractor's yard . . . "

See Order, Exhibit "C"

Argument

The Board should overturn the Cease and Desist Order for the following reasons:

1(a) "you have failed to obtain a building permit for any structures associated with, or the operation of A-1 Asphalt Co., Inc. . . . "

This allegation is false.

A-1 Asphalt operates out of a garage which was built pursuant to a building permit obtained in 1932. The Building Department has also issued permits to A-1 Asphalt in 1973 (installation of gas pumps); 1999 (electrical work for diesel fuel pumps); and 2000 (replacement of defective electrical cable). See Certificate of Occupancy and Permits, Exhibit "D."

Each of these permits was issued pursuant to the use of the property by A-1 Asphalt as a contractor's yard. At no time did the Building Department raise a complaint regarding these permits relating to the ongoing use of the property.

The Building Department has been aware of A-1 Asphalt's ongoing use of the property for decades, and it has issued numerous permits related to that business. It is disingenuous for the building commissioner to now suggest that the business should have to cease operation because the building department was somehow not alert to the fact that A-1 was operating a business on that property.

As a matter of law the commissioner's reliance on the provisions of the current zoning ordinance is erroneous.

Under the "grandfathering" provisions of state law and the city code, a zoning ordinance "shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing" on such ordinance. M.G.L. c. 40A § 6; and New Bedford Code, c. 9, Comprehensive Zoning, §§ 2400 and 2410. See Exhibit "E"

The commissioner apparently relies on the language of the current zoning ordinance to claim that there is a requirement that a permit is required for the operation of A-1 Asphalt. But the current zoning ordinance went into effect in 2002, nearly forty years after the company began operating. That ordinance does not apply to a prior lawfully existing use, and the commissioner cites no law that suggests that the use of the property as a contractor's yard was not lawful prior to 2002.

In fact, even now a contractor's yard is expressly permitted as a use in the Industrial "B" zone. Chapter 9, Comprehensive Zoning, 2210; Appendix A at D Industrial, 13. Contractor's yard. See Exhibit "F"

1(b) "you have failed to obtain the required permit for a contractor's yard . . ."

This is not a zoning issue, and is not within this Board's jurisdiction.

and concrete in its yard since the 1990's. At that time, the applicable zoning ordinance provided that:

"Within any Industrial "B" District, as indicated on the building zone map, any use otherwise lawful shall be permitted except a building or structure intended or designed to be used in whole or in part for residential purposes or for use as a fish fillet plan or fish processing plant". c. 9 Comprehensive Zoning, § 9-253 Uses. See Exhibit "G"

There is nothing that suggests that crushing rock and concrete was not an "otherwise lawful" business operation (i.e. - no other law prohibited a person from being in the business of crushing stone and concrete).

The present zoning ordinance took effect in 2002. Crushing stone and concrete was, until 2002, an allowed use in the Industrial "B" zone. As such, pursuant to state law and the city code, as cited above, that use is a prior existing non-conforming use, and the provisions of the 2002 zoning code do not apply to A-1 Asphalt's rock and concrete crushing operations.

Conclusion

A-1 Asphalt has properly obtained all necessary building permits for "structures associated with, or the operation of," its business.

A-1 Asphalt's right to use its property for its present operation is grandfathered by law.

For the reasons stated above, A-1's use of the property is permitted under the zoning ordinances and under state law, and the Commissioner of Buildings' Cease and Desist Order should be overturned.

Anthony DeCosta
~~By his Attorney,~~



Thomas P. Crotty Esq., BBO #106800
388 County Street, Third Floor
New Bedford, MA 02740
Telephone: 508-990-9101
Facsimile: 508-990-9108
Email: tomcrotty@tcrottylaw.com

Dated: _____, 2016


AFFIDAVIT OF ANTHONY R. DeCOSTA

I, Anthony R. DeCosta, hereby depose and state:

1. I am the owner of A-1 Asphalt Co., Inc. which has its principal office at 1861 Shawmut Avenue, New Bedford, Massachusetts.
2. My father, Charles DeCosta, Sr. incorporated A-1 Asphalt in 1964, and it operated from his property at 1861 Shawmut Avenue, New Bedford.
3. The property at 1861 Shawmut Avenue consists of approximately ten (10) acres which is zoned Industrial B.
4. I began helping my father at his business at the age of seven in 1968. I took over the business when he died in 1994.
5. In 1981, A-1 Asphalt started taking in asphalt and concrete from excavation work at road and construction projects.
6. A-1 has been continually performing crushing operations on the property since at least 1991. We began using rented equipment, but bought our own equipment in the mid-90's.
7. The materials which A-1 receives come from excavation work at construction sites. (We do not accept building debris, other than foundation materials.)
8. The materials are separated on the site into soils, clay, stone, asphalt and concrete. The soils are reusable as loam or fill. The hard materials are crushed so that they are reusable as aggregate for new construction projects.
9. A-1 does not process or batch asphalt or store liquid asphalt at the property.
10. Until about seven years ago there were no residences near the A-1 property except my family home, which is next to the A-1 property.
11. More recently a half dozen or so homes have been built across Shawmut Avenue from my house and the A-1 property. A-1 was performing its crushing operation for years before those homes were built.
12. The stone, concrete and asphalt crushing operation on the property has remained consistent for years. Increases in volume are sporadic. Those increases occur when we receive

materials from excavation at large construction projects such as state road work, or the airport expansion project. When those projects conclude the crushing operation returns to its previous level.

Date: 9/1/15, 2015


Anthony R. DeCosta

B

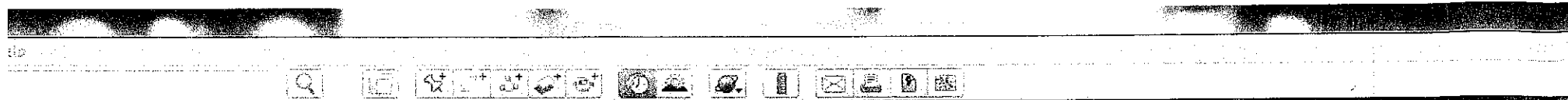


Image © U.S. Geological Survey

1861 Shawmut Ave

Go

Imagery Date: 4/2/1995 41°40'36.81" N 70°58'04.41" W





5/6/2015



1861 Shawmut Ave

Imagery Date: 5/6/2015 41°40'37.02" N 70°58'05.87" W

Go





CITY OF NEW BEDFORD, MASSACHUSETTS
INSPECTIONAL SERVICES

REVISED

CEASE AND DESIST ORDER

DATE: MAY 18, 2016

To: ANTHONY R. DE COSTA
1861 SHAWMUT AVE.
NEW BEDFORD, MA. 02747

Re: Violations existing at:
1861 SHAWMUT AVE. PLOT 124 LOT 27
NEW BEDFORD, MA. 02747

Anthony R. Decosta
Constable
5/18/16

Pursuant to the provisions of the New Bedford Zoning Ordinances and the Massachusetts State Building Codes, you, as Owner, agent, lessee, or operator of the above premises are hereby ordered to **CEASE AND DESIST** all operations of the business located at the above address on or before **10:00 A.M., Friday May 20, 2016.**

This cease and desist order is issued as a result of the following violations of the City of New Bedford Ordinances and Massachusetts State Building Code:

1(a) You have failed to obtain a building permit for any structures associated with, or the operation of, A-1 Asphalt Co., Inc. in violation of New Bedford Ordinance Chapter 6 (Buildings and Other Structures) Sections 6-28 (c) permit, 6-32 (a+ b) Certificate of occupancy, Chapter 9 (Comprehensive Zoning) Sections 5000 (Administration and Procedures), 5100 (Administration), 5110 (Permits), 5120 (Enforcement), 5130 (Penalties), M.G.L. Chapter 40 A §7, and any and all prior ordinances which require a building permit.

1(b) You failed to obtain the required permit for a contractor's yard, specifically including but not limited to Section 105.3 subsection 3 which states in part that an applicant must "Indicate the use and occupancy for which the proposed work is intended" in violation of the Massachusetts State Building Code IBC Massachusetts Amendments 780 CMR Sections 105-105.8

2. The rock and concrete crushing operations and the crushing and recycling of other materials are not permitted activities in a contractor's yard as defined in the Code of Ordinances. The Code of Ordinances defines a contractor's yard as "land used for the storage of commercial construction equipment, materials, and supplies and for the parking of registered commercial vehicles."

YOU MUST CEASE AND DESIST ALL OPERATIONS UNTIL A BUILDING PERMIT IS OBTAINED

The operation of A1 Asphalt is in violation of the ordinances and has resulted in substantial quality of life issues to the neighbors located in the proximity to A1's operation, including but not limited to the following: Equipment on the A-1 site are crushing and recycling materials making noise and vibrating the ground and homes in this area. Dust and dirt are constantly settling on neighbor's properties, vehicles, and inside their homes making it impossible

to open the windows or enjoy their yards and making it dangerous for children to play. These are a few of the quality of life issues that have resulted from your violation of the City of New Bedford Ordinances.

You are also notified that inspection will be made on or after the cease and desist date ordered above and on an ongoing basis thereafter to ascertain whether or not this order has been complied with. You will be subject to the penalties established by the revised municipal ordinances of the City of New Bedford and the Massachusetts State Building Code if you are not in compliance with this order. This order may be appealed to the Board of Appeals, Room 303, Municipal Building, within thirty (30) days of receipt of this Order.

Notice is hereby given that violations of the Zoning and Building Sections of the Municipal or State Codes, as amended, exist on the above mentioned premises. The violations are as follows and specifically are violations of the following sections of the aforementioned codes and amending ordinances:

<u>VIOLATIONS</u>		
<u>Sections</u>	<u>Chapter 9 Comprehensive Zoning</u>	<u>Reference</u>
2200	Use Regulations	New Bedford Zoning Ordinance
2210	General	New Bedford Zoning Ordinance
2230	Table of Use Regulations Appendix A (D) Industrial #1	New Bedford Zoning Ordinance
2230	Table of Use Regulations Appendix A (D) Industrial #11	New Bedford Zoning Ordinance
2230	Table of Use Regulations Appendix A (D) Industrial #12	New Bedford Zoning Ordinance
2230	Table of Use Regulations Appendix A (D) Industrial #13	New Bedford Zoning Ordinance
2230	Table of Use Regulations Appendix A (D) Industrial #14	New Bedford Zoning Ordinance
2230	Table of Use Regulations Appendix A (D) Industrial #15	New Bedford Zoning Ordinance
2230	Table of Use Regulations Appendix A (D) Industrial #18	New Bedford Zoning Ordinance
5000	Administration and Procedures	New Bedford Zoning Ordinance
5100	Administration	New Bedford Zoning Ordinance
5110	Permits	New Bedford Zoning Ordinance
5120	Enforcement	New Bedford Zoning Ordinance
5130	Penalties	New Bedford Zoning Ordinance
5220	Powers	New Bedford Zoning Ordinance
5222	The Board of Appeals may not grant use variances	New Bedford Zoning Ordinance
<u>Reference</u>		
<u>Sections</u>	<u>Chapter 6 Buildings and Other Structures</u>	<u>Reference</u>
6-28 (c)	Permit	New Bedford Zoning Ordinance
6-32 (a+b)	Certificate of Occupancy	New Bedford Zoning Ordinance

M.G.L. Chapter 40 A §7, and any and all prior ordinances which require a building permit.

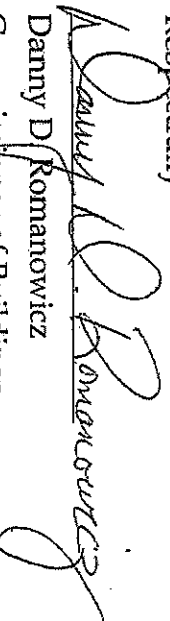
Failure to comply may result in a fine of \$1000.00 and imprisonment for not more than a year or both for each such violation. Each day during which a violation exists shall constitute a separate offense.

(M.G.L. Chapter 143 Section 94). Alternatively, you may be fined under the following City Ordinance:

Section 5130 Penalties. The penalty for violation of any provision of this Ordinance, of any of the conditions under which a permit is issued, or of any decision rendered by the Board of Appeals, any special permit granting authority, or the Planning Board acting as site plan approval board shall be three hundred dollars (\$300.00) for each offense. Each day that each violation continues shall constitute a separate offense.

New Bedford Ordinance Chapter 9 Comprehensive Zoning

Respectfully


Danny D Romanowicz
Commissioner of Buildings

PROOF OF SERVICE

On May 18, 2016 I served a copy of the above CEASE AND DESIST ORDER upon
The within name ANTHONY R. DECOSTA

In the following manner: Delivered by Constable

Dated: 5/18/2016

Cc: City Solicitor

General file

Building Commissioner

CERTIFICATE OF OCCUPANCY

504-50

Jan. 25, 1932

Charles Wellington,
1861 Shannett Avenue,
New Bedford, Mass.

1861 Shannett Avenue.

One story cement block building;

purpose of garage—5 car capacity.

Respectfully yours,

W. O. Madhuca
Inspector of Buildings.

269	REPORT
Owner	Charles Costa
Address	1861 Sherman Avenue
Contractor	Ken's Elec.
Work	Mixed Gas pump
Color	YELLOW
Blue	GREEN
Date	8/6/73
RED	
DATE	

270	REPORT
Owner	ALANOS MORGAN
Address	BYROND HILL CT
Contractor	
Work	FRONT PORCH - 4 INCH PANEL, REVISIONS AND REMOVE OLD P.M.S. 900
Color	YELLOW
Blue	GREEN
Date	8/6/73
RED	
DATE	



The Commonwealth of Massachusetts
Department of Public Safety

BOARD OF FIRE PREVENTION REGULATIONS 527 CMR 12:00

Office Use Only	REG
Permit No. _____	RCT
Occupancy & Fee Checked 3/90 (leave blank)	RCD
	CPY
	ACT

APPLICATION FOR PERMIT TO PERFORM ELECTRICAL WORK

All work to be performed in accordance with the Massachusetts Electrical Code, 527 CMR 12:00

(PLEASE PRINT IN INK OR TYPE ALL INFORMATION)

Date 5-7-99

City or Town of N.B.

To the Inspector of Hires:

The undersigned applies for a permit to perform the electrical work described below.

Location (Street & Number) 1861 SHAWMUT AVE

Owner or Tenant A-1 ASPHALT CO. INC.

Owner's Address _____

Is this permit in conjunction with a building permit: Yes No (Check Appropriate Box)

Purpose of Building COMMERCIAL USE Utility Authorization NO. _____

Existing Service _____ Amps _____ Volts _____ Overhead Undgrd No. of Meters _____

New Service _____ Amps _____ Volts _____ Overhead Undgrd No. of Meters _____

Number of Feeders and Ampacity _____

Location and Nature of Proposed Electrical Work WIRE 2 DIESEL PUMPS

No. of Lighting Outlets	No. of Hot Tubs	No. of Transformers	Total KVA
No. of Lighting Fixtures	Swimming Pool Above <input type="checkbox"/> In- <input type="checkbox"/> grnd.	Generators	KVA
No. of Receptacle Outlets	No. of Oil Burners	No. of Emergency Lighting Battery Units	
No. of Switch Outlets	No. of Gas Burners	FIRE ALARMS No. of Zones	
No. of Ranges	No. of Air Cond. Total tons	No. of Detection and Initiating Devices	
No. of Disposals	No. of Heat Pumps Total KW	No. of Sounding Devices	
No. of Dishwashers	Space/Area Heating KW	No. of Self Contained Detection/Sounding Devices	
No. of Dryers	Heating Devices KW	Local <input type="checkbox"/> Municipal <input type="checkbox"/> Other	
No. of Water Heaters KW	No. of Sigs	Low Voltage Wiring	
No. Hydro Massage Tubs	No. of Motors Total HP		

OTHER _____

INSURANCE COVERAGE: Pursuant to the requirements of Massachusetts General Laws I have a current Liability Insurance Policy including Completed Operations Coverage of its substantial equivalent. YES NO I have submitted valid proof of same to this office. YES NO If you have checked YES, please indicate the type of coverage by checking the appropriate box.

INSURANCE BOND OTHER (Please Specify) _____ (Expiration Date)

Estimated Value of Electrical Work \$ _____

Work to Start _____ Inspection Date Requested: Rough _____ final _____

Signed under the penalties of perjury:

FIRM NAME FREN BORGES ELECTRIC INC IIC. NO. A15147

Licensee _____ Signature Fred Borges IIC. NO. _____

Address PO Box 61416 N.B. Bus. Tel. No. 998-7555

Alt. Tel. No. _____

OWNER'S INSURANCE WAIVER: I am aware that the Licensee does not have the insurance coverage or its substantial equivalent as required by Massachusetts General Laws, and that my signature on this permit application waives this requirement. Owner _____ Agent _____ (Please check one)

(Signature of Owner or Agent) _____ Telephone No. _____ PERMIT FEE \$ 25.00



The Commonwealth of Massachusetts
Department of Public Safety

BOARD OF FIRE PREVENTION REGULATIONS 527 CMR 1200

Permit No. _____	Offer Use Only
Occupancy & Fee Checked 3/90	(leave blank)

APPLICATION FOR PERMIT TO PERFORM ELECTRICAL WORK

All work to be performed in accordance with the Massachusetts Electrical Code, 527 CMR 12:00

(PLEASE PRINT IN INK OR TYPE ALL INFORMATION)

Date 9/18/00

City or Town of New Bedford

To the Inspector of Wires:

The undersigned applies for a permit to perform the electrical work described below.

Location (Street & Number) 1861 Shawmut Ave.

Owner or Tenant Charlie DaCosta

Owner's Address Same

Is this permit in conjunction with a building permit: Yes No (Check Appropriate Box)

Purpose of Building A-1 Asphalt Utility Authorization NO. _____

Existing Service 100 Amps 120 / 240 Volts Overhead Undgrd No. of Meters 1

New Service _____ Amps 1 Volts Overhead Undgrd No. of Meters _____

Number of Feeders and Ampacity 2 Feeders 100amp

Location and Nature of Proposed Electrical Work Replace defective SE cable.

Emergency cut off.

No. of Lighting Outlets	No. of Hot Tubs	No. of Transformers	Total KVA
No. of Lighting Fixtures	Swimming Pool <input type="checkbox"/> Above grnd. <input type="checkbox"/> In- grnd. <input type="checkbox"/>	Generators	KVA
No. of Receptacle Outlets	No. of Oil Burners	No. of Emergency Lighting Battery Units	
No. of Switch Outlets	No. of Gas Burners	FIRE ALARMS No. of Zones	
No. of Ranges	No. of Air Cond. <input type="checkbox"/>	No. of Detection and Initiating Devices	
No. of Disposals	No. of Heat Pumps Total KW	No. of Sounding Devices	
No. of Dishwashers	Space/Area Heating KW	No. of Self Contained Detection/Sounding Devices	
No. of Dryers	Hearing Devices KW	Local <input type="checkbox"/> Municipal <input type="checkbox"/> Other <input type="checkbox"/>	
No. of Water Heaters KM	No. of Signs	Low Voltage Wiring	
No. Hydro Massage Tubs	No. of Motors Total HP		

OTHER:

INSURANCE COVERAGE: Pursuant to the requirements of Massachusetts General Laws I have a current Liability Insurance Policy including Completed Operations Coverage or its substantial equivalent. YES NO I have submitted valid proof of same to this office. YES NO If you have checked YES, please indicate the type of coverage by checking the appropriate box.

INSURANCE BOND OTHER (Please Specify) 2/26/01
(Expiration Date)

Estimated Value of Electrical Work \$ _____
Work to Start _____ Inspection Date Requested: Rough _____ Final 9/18/00

Signed under the penalties of perjury:

FIRM NAME John Sulyma Electric, Inc. LIC. NO. A16451

Licensee John Sulyma Signature [Signature] LIC. NO. _____

Address 1203 Chafee St New Bedford Ma 01745 Bus. Tel. No. (508) 998-3882

OWNER'S INSURANCE WAIVER: I am aware that the licensee does not have the insurance coverage or its substantial equivalent as required by Massachusetts General Laws, and that my signature on this permit application waives this requirement. Owner Agent (Please check one)

Telephone No. _____

PERMIT FEE \$25.00

Chapter 9

COMPREHENSIVE ZONING

TABLE OF CONTENTS

SECTION 1000. PURPOSE, AUTHORITY, AND DEFINITIONS.

1100. PURPOSE AND AUTHORITY

1200. DEFINITIONS

SECTION 2000. USE AND DIMENSIONAL REGULATIONS.

2100. DISTRICTS

- 2110. Establishment
- 2120. Boundary Definition

2200. USE REGULATIONS

- 2210. General
- 2220. Applicability
- 2230. Table of Use Regulations

2300. ACCESSORY BUILDINGS AND USES

- 2310. General
- 2320. Accessory Uses
- 2330. Accessory Structures
- 2340. Accessory Dwelling Units

2400. NONCONFORMING USES AND STRUCTURES

- 2410. Applicability
- 2420. Nonconforming Uses
- 2430. Nonconforming Structures, Other Than Single & Two Family Structures
- 2440. Nonconforming Single and Two Family Structures
- 2450. Abandonment or Non-Use
- 2460. Catastrophe
- 2470. Reversion to Nonconformity

2500. HOME OCCUPATIONS

- 2510. Home Occupations As of Right
- 2520. Home Occupations by Special Permit

2600. LOW LEVEL RADIOACTIVE WASTE

- 2610. Low-level radioactive waste or nuclear waste facilities

2700. DIMENSIONAL REGULATIONS

- 2710. General
- 2720. Table of Dimensional Requirements

NEW BEDFORD CODE
2400. NONCONFORMING USES AND STRUCTURES.

2410. Applicability. This zoning ordinance shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by G.L. c. 40A, s. 5 at which this zoning ordinance, or any relevant part thereof, was adopted. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder. (Ord. of 12-23-03, § 1)

2420. Nonconforming Uses. The Board of Appeals may award a special permit to change a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The following types of changes to nonconforming uses may be considered by the Board of Appeals:

2421. Change or substantial extension of the use;

2422. Change from one nonconforming use to another, less detrimental, nonconforming use. (Ord. of 12-23-03, § 1)

2430. Nonconforming Structures, Other Than Single and Two Family Structures. The Board of Appeals may award a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The following types of changes to nonconforming structures may be considered by the Board of Appeals:

2431. Reconstructed, extended or structurally changed;


2432. Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent;

The reconstruction, extension or structural change of such nonconforming structures so as to increase an existing nonconformity, or create a new nonconformity, including the extension of an exterior wall, at or along the same nonconforming distance within a required yard, shall require the issuance of a variance from the Board of Appeals. (Ord. of 12-23-03, § 1)

2440. Nonconforming Single and Two Family Structures. Nonconforming single and two family residential structures may be reconstructed, extended, altered, or structurally changed upon a determination by the Inspector of Buildings that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure, and the issuance of a building permit, where applicable. In the event that the Inspector of Buildings determines that the nonconforming nature of such structure would be increased by the proposed reconstruction, extension, alteration, or change, the Board of Appeals may, by finding (which shall not require a super majority), allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood. (Ord. of 12-23-03, § 1)

2450. Abandonment or Non-Use. A nonconforming use or structure which has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to all of the provisions of this zoning ordinance. (Ord. of 12-23-03, § 1)

2460. Catastrophe. Any nonconforming structure may be reconstructed after a fire, explosion or other catastrophe, provided that such reconstruction is completed within twelve months after such catastrophe, and provided that the building(s) as reconstructed shall be only as great in volume or area as the original nonconforming structure unless a larger volume or area is authorized by special permit from the Board of Appeals. Such time for reconstruction may be extended by the Board of Appeals for good cause. (Ord. of 12-23-03, § 1)



THE 189TH GENERAL COURT OF
THE COMMONWEALTH OF MASSACHUSETTS

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[Options](#)

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[Massachusetts Laws](#) | [Bills](#) | [State Budget](#) | [People](#) | [Committees](#) | [Reports](#) | [Educate & Engage](#) | [Events](#) | [MyLegislature](#)

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[General Laws](#)

[Session Laws](#)

[Rules](#)

General Laws

Print Page

PART I	ADMINISTRATION OF THE GOVERNMENT	NEXT
TITLE VII	CITIES, TOWNS AND DISTRICTS	PREV NEXT
CHAPTER 40A	ZONING	PREV NEXT
Section 6	Existing structures, uses, or permits; certain subdivision plans; application of chapter	PREV NEXT

Section 6. Except as hereinafter provided, a zoning ordinance or by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing on such ordinance or by-law required by section five, but shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure. Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. This section shall not apply to establishments which display live nudity for their patrons, as defined in section nine A, adult bookstores, adult motion picture theaters, adult paraphernalia shops, or adult video stores subject to the provisions of section nine A.

A zoning ordinance or by-law shall provide that construction or operations under a building or special permit shall conform to any subsequent amendment of the ordinance or by-law unless the use or construction is commenced within a period of not more than six months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

A zoning ordinance or by-law may define and regulate nonconforming uses and structures abandoned or not used for a period of two years or more.

jurisdiction, the applicability to land shown on said plan of the provisions of any zoning ordinance or by-law which became effective after the date of submission of the plan first submitted, together with time required to comply with any such agreement or with the terms of any order or decree of the court.

In the event that any lot shown on a plan endorsed by the planning board is the subject matter of any appeal or any litigation, the exemptive provisions of this section shall be extended for a period equal to that from the date of filing of said appeal or the commencement of litigation, whichever is earlier, to the date of final disposition thereof, provided final adjudication is in favor of the owner of said lot.

The record owner of the land shall have the right, at any time, by an instrument duly recorded in the registry of deeds for the district in which the land lies, to waive the provisions of this section, in which case the ordinance or by-law then or thereafter in effect shall apply. The submission of an amended plan or of a further subdivision of all or part of the land shall not constitute such a waiver, nor shall it have the effect of further extending the applicability of the ordinance or by-law that was extended by the original submission, but, if accompanied by the waiver described above, shall have the effect of extending, but only to extent aforesaid, the ordinance or by-law made then applicable by such waiver.

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Exhibit "F"

TABLE OF CONTENTS

SECTION 1000. PURPOSE, AUTHORITY, AND DEFINITIONS.	
<u>1100.</u>	PURPOSE AND AUTHORITY
<u>1200.</u>	DEFINITIONS
SECTION 2000. USE AND DIMENSIONAL REGULATIONS.	
<u>2100.</u>	DISTRICTS
2110.	Establishment
2120.	Boundary Definition
<u>2200.</u>	USE REGULATIONS
2210.	General
2220.	Applicability
2230.	Table of Use Regulations
<u>2300.</u>	ACCESSORY BUILDINGS AND USES
2310.	General
2320.	Accessory Uses
2330.	Accessory Structures
2340.	Accessory Dwelling Units
<u>2400.</u>	NONCONFORMING USES AND STRUCTURES
2410.	Applicability
2420.	Nonconforming Uses
2430.	Nonconforming Structures, Other Than Single- and Two-Family Structures
2440.	Nonconforming Single- and Two-Family Structures
2450.	Abandonment or Non-Use
2460.	Catastrophe
2470.	Reversion to Nonconformity
<u>2500.</u>	HOME OCCUPATIONS
2510.	Home Occupations as of Right
2520.	Home Occupations by Special Permit
<u>2600.</u>	LOW-LEVEL RADIOACTIVE WASTE

5700.	PLANNING MORATORIUM
5710.	MORATORIUM ON USED CAR SALES PERMITS
	5800—8999. RESERVED
9000.	SEPARABILITY
APPENDICES	
	A TABLE OF PRINCIPAL USE REGULATIONS
	B TABLE OF DIMENSIONAL REGULATIONS
	C TABLE OF PARKING AND LOADING REQUIREMENTS

Footnotes:

— (1) —

State Law reference—Zoning, M.G.L.A. c. 40A, § 1 et seq.

SECTION 1000. - PURPOSE, AUTHORITY, AND DEFINITIONS.

1100. - PURPOSE AND AUTHORITY.

These regulations are enacted to promote the general welfare of the City of New Bedford, to protect the health and safety of its inhabitants, to encourage the most appropriate use of land throughout the City, to preserve the cultural, historical heritage of the community, to increase the amenities of the City, and to reduce the hazard from fire by regulating the location and use of buildings and the area of open space around them, all as authorized by, but not limited to, the provisions of the Zoning Act, M.G.L.A. c. 40A, as amended, Section 2A of 1975 Mass. Acts 808, and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

(Ord. of 12-23-03, § 1)

1200. - DEFINITIONS.

In this Ordinance, the following terms and constructions shall apply unless a contrary meaning is required by the context or is specifically prescribed in the text of the ordinance. Words used in the present tense include the future. The singular includes the plural and the plural includes the singular. The word "shall" is mandatory and "may" is permissive or discretionary. The word "and" includes "or" unless the contrary is evident from the text. The word "includes" or "including" shall not limit a term to specified examples, but is intended to extend its meaning to all other instances, circumstances, or items of like character or kind. The word "lot" includes "plot"; the word "used" or "occupied" shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied". The words "building," "structure," "lot," or "parcel," shall be construed as being followed by the words "or any portion thereof." The word "person" includes a firm, association, organization, partnership, company, or corporation, as well as an individual. Terms and words not defined herein but defined in the Commonwealth of Massachusetts state building code shall have the meaning given therein unless a contrary intention is clearly evident in this Ordinance.

Accessory building: A subordinate building located on the same lot as the main, or principal building or principal use, the use of which is customarily incidental to that of the principal building or use of the land.

Accessory dwelling unit: A dwelling unit, subordinate to the dwelling unit in a single-family structure, whether located within the principal structure or in a detached structure on the property.

Accessory use: A use customarily incidental to that of the main or principal building or use of the land, and located on the same lot.

Adult day care facility: A social day care or adult day health facility, as those terms are defined by the Commonwealth's Department of Elder Affairs.

Adult entertainment establishment: An establishment having a substantial or significant portion of its business activity, stock in trade, or other materials for sale, rental or display, which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to sexual conduct as defined in M.G.L.A. c. 272, § 31, including but not limited to the following: any adult bookstore, adult live entertainment establishment, adult motion picture theatre, adult mini motion picture theatre, adult paraphernalia store or adult video store as defined below:

Adult bookstore: An establishment having as a substantial or significant portion of its stock in trade printed matter, books, magazines, picture periodicals, motion picture films, video cassettes, computer compact disks, computer disks or diskettes, or coin-operated motion picture machines for sale, barter or rental which are distinguished or characterized by their emphasis on matters depicting, describing or

Frontage of: A lot line coinciding with the sideline of a street which provides both legal rights of vehicular access and actual physical vehicular access to the lot, said line to be measured continuously along a single street for the entire width of the lot. Vehicular access to a building site on the lot shall be exclusively through the legal frontage of the lot.

Line: The dividing line between lots. A rear lot line is the lot line opposite to the street line, or in the case of a corner lot, the lot line elected by the owner, provided that it be indicated on the plans filed with the Inspector of Buildings as provided hereafter. On a corner lot, only one line can be considered a street line; all other lines shall be considered side lines.

Width of: The horizontal distance between side lot lines, measured parallel to the lot frontage at the front yard setback line.

Low-level or radioactive waste facility: A facility the primary purpose or principal activity of which is the commercial collection, processing, reprocessing, storage, burial, incineration, disposal or brokerage of radioactive wastes, including but not limited to waste classified as low-level radioactive waste.

M.G.L.A.: The General Laws of the Commonwealth of Massachusetts, as amended from time to time.

Major recreational equipment: Campers, trailers, boats, vessels or other recreational vehicles or equipment.

Manufacturing: A use engaged in the basic processing and manufacturing of materials, or the manufacture from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products, but not including the following:

Garbage and refuse incineration or disposal otherwise of material not originating on the premises, except by except by the City of New Bedford; distillation of bones, rendering or fat or reduction of animal matter, manufacturing of glue; oil refining; bulk storage of petroleum products; foundries, manufacture of large machine parts, metal working; taverns; manufacture of cement products and cement mixing; processing, storage and distribution of asphalt products; slaughterhouses; sand gravel and stone processing plants; trailer parks and mobile homes; airports; piggeries.

Medical center or clinic: A building designed and used for the diagnosis and treatment of human patients that does not include overnight car facilities.

Mobile home: A dwelling built upon a chassis, containing complete electrical, plumbing and sanitary facilities, and designed without necessity of a permanent foundation for year-round living, irrespective of whether actually attached to a foundation or otherwise permanently located.

Motel: A building or buildings intended and designed for transient overnight or extended occupancy, divided into separate units within the same building with or without a public dining facility. If such motel has independent cooking facilities, such unit shall not be occupied by any guest for more than four (4) continuous months, nor may the guest reoccupy any unit within thirty (30) days of a continuous four-month stay, nor may the guest stay more than six (6) months in any calendar year. No occupant of such motel may claim residency at such location.

Motor vehicle: An automobile, truck, motorcycle, or other trackless, self-propelled vehicle designed primarily to transport persons or property over public streets and highways.

Motor vehicle body repair: An establishment, garage or work area enclosed within a building where repairs are made or caused to be made to motor vehicle bodies, including fenders, bumpers and similar components of motor vehicle bodies or fuel sales.

Motor vehicle general repair: An establishment, garage or work area enclosed within a building where any automobile repair, excluding body work and painting may occur, but does not include the storage of vehicles for the cannibalization of parts or fuel sales.

Motor vehicle general or body repair: An establishment, garage or work area enclosed within a building where repairs are made or caused to be made to motor vehicle and their bodies, including fenders, bumpers and similar components of motor vehicle bodies, but does not include the storage vehicles for the cannibalization of parts or fuel sales.

Motor vehicle light service: Premises for the supplying of fuel, oil, lubrication, washing, or minor repair services, but not to include body work, painting, or major repairs, or storage of vehicles for parts.

Motor vehicle light services/convenience store: A light service station which also engages in the over-the-counter sale of non-automobile related products. This use shall adhere to the regulations for specific uses for both commercial/business facilities and motor vehicle light service, whichever is greater. This use shall also adhere to the off-street parking regulations for retail businesses.

Municipal facilities: Facilities owned or operated by the City of New Bedford.

Nursing or convalescent home: Any building with sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire.

Oceanarium: A large aquarium for the exhibition or study of marine life.

Place of assembly: A facility as defined in the State Building Code, 780 CMR 1.00 et seq.

Private garage: A garage for private use, whether as a principal or accessory use of a lot, provided that no business, service or industry connected directly or indirectly with motor vehicles is carried on, and provided that such garage shall not contain space for more than one motor vehicle for the first one thousand (1,000) square feet of lot area, and one additional motor vehicle for each additional two thousand

A "mezzanine story" is a full story wherever it occupies more than one-third (1/3) of the area of the story in which it is situated.

An "attic" is the space between the top story and a pitched roof.

Street: An accepted City way, or a way established by or maintained under county, state, or federal authority, or a way established by a subdivision plan approved in accordance with the subdivision control law actually constructed to specifications or for which adequate security exists to construct such way.

Street line: The dividing line between a street and a lot.

Structure: A combination of materials assembled at a fixed location to give support or shelter, such as a building, framework, retaining wall, tent, reviewing stand, platform, bin, fence, sign, flagpole, recreational tramway, mast for radio antenna or the like.

Tattooing: Any method of placing ink or other pigment into or under the skin or mucosa by the aid of needles or any other instrument used to puncture the skin, resulting in permanent coloration of the skin or mucosa. This includes all forms of cosmetic tattooing.

Tire recycling and re-treading: The process by which used tires are cut, torn, ripped or mutilated with the intention of being used in the manufacture of new tires or the process by which new tire treads are affixed to used tires.

Trailer: Any so-called automobile trailer, trailer coach, mobile home, including any portable structure, means of conveyance, or vehicle so designed, constructed, altered or converted in any manner as to permit occupancy thereof for dwelling or sleeping purposes, storage, or conducting business. The term "trailer" shall exclude construction site trailers.

Trailer camp or park: Any lot, parcel or tract of land, upon which two (2) or more trailers, occupied for dwelling or sleeping purposes, are located, regardless of whether or not a charge is made for such an accommodation.

Transport terminal: Terminal facilities for handling freight with or without maintenance facilities.

Warehouse: A building used primarily for the storage of goods and materials, for distribution, but not for sale on the premises.

Wireless Communication Facilities (WCF): A facility for the provision of wireless communication service including, but not limited to, towers, monopoles, satellite dish(es) over three (3) feet diameter, antennas, antennas attached to existing structures, and accessory structures, if any, which facilitate the provision of wireless communication service.

Wireless Communication Service (WCS): The provision of the following types of services: cellular telephone service, radio and television transmission services, personal communication service and enhanced mobile radio service.

Yard: A space open to the sky, located between a building or structure and a lot line, unoccupied except by fences, walls, poles, paving, and other customary yard accessories.

A "front yard" is a required open unoccupied space, within and extending the full width of the lot, between the street line and the front of a building.

A "side yard" is a required open unoccupied space within the lot between a side lot line, not a street line, and the parts of the building nearest to such lot line. Such a side yard shall extend for its required width from the street line or the front yard to the rear yard or its equivalent or to another street.

A "rear yard" is a required open unoccupied space, the full width of the lot, lying between the extreme rear wall of the building and the rear line of the lot or the middle line of a public street or private way in case the lot borders on such street or way, except as hereinafter provided. In the case of a triangular lot with only one side fronting on a street, the rear yard is the open unoccupied space between the extreme rear wall of the building and a line half way between it and the point of intersection of the side lines of the lot, except as hereinafter provided.

(Ord. of 12-23-03, § 1; Ord. of 1-15-13, § 3; Ord. of 10-8-13, § 1; Ord. of 1-27-14, § 1)

SECTION 2000. - USE AND DIMENSIONAL REGULATIONS.

2100. - DISTRICTS.

2110. **Establishment.** For the purposes of this Ordinance, the City of New Bedford is hereby divided into the following districts:

Residence A District (RA)

Residence B District (RB)

Residence C District (RC)

Residence AA District (RAA)

Mixed Use Business District (MUB)

Planned Business District (PB)

Industrial A District (IA)

Industrial B District (IB)
Industrial C District (IC)
Waterfront Industrial District (WI)
Downtown Business Overlay District (DBOD)
Riverside Avenue Mill Overlay District (RAMOD)

The following overlay districts are also hereby created:

Flood Hazard Overlay District (FHOD)
Downtown Overlay District
Working Waterfront Overlay District
Wamsutta Mill Overlay District (WMOD)
Cove Street Mill Overlay District (COSMOD)
Mott-David-Ruth Mill Overlay District (MDRMOD)
Soule Mill Overlay District (SMOD)

Except as otherwise provided herein, the boundaries of these districts are defined and set forth on the map entitled, "Zoning Map, City of New Bedford, dated _____," as may be subsequently amended by vote of the City Council. This map is on file with the City Clerk. The zoning map, with all explanatory matter thereon, is hereby made a part of this Ordinance. The boundaries of all land use zoning districts adjoining tidal waters shall extend to the low water mark as defined in regulations promulgated pursuant to M.G.L.A. c. 91 by the Massachusetts Department of Environmental Protection.

(Ord. of 12-23-03, § 1; Ord. of 6-7-04, § 1; Ord. of 1-27-06, § 1)

2120. **Boundary Definition.** Except when labeled to the contrary, boundary or dimension lines shown approximately following or terminating at street, railroad, or utility easement center or layout lines, boundary or lot lines at water body shoreline or the channel of a stream, shall be construed to be actually at those lines; when shown approximately parallel, perpendicular, or at an angle to such lines shall be construed to be actually parallel, perpendicular, or at an angle thereto. When not located in any other way, boundaries shall be determined by scale from the map.

(Ord. of 12-23-03, § 1)

State Law reference— Zoning districts generally, M.G.L.A. c. 40A, § 4.

2200. - USE REGULATIONS.

2210. **General.** No structure shall be erected or used or land used except as set forth in Section 2230. "**Table of Use Regulations**", unless otherwise provided by this Ordinance or by statute. Uses not expressly provided for herein are prohibited. Not more than one principal structure shall be placed on a lot, except in accordance with Section 2330.

Symbols employed below shall mean the following:

Y - A permitted use.
N - An excluded or prohibited use.
BA - A use authorized under special permit from the Board of Appeals as provided under Section 5300.
CC - A use authorized under special permit from the City Council as provided under Section 5300.
PB - A use authorized under special permit from the Planning Board as provided under Section 5300.

2220. **Applicability.** When an activity might be classified under more than one of the following uses, the more specific classification shall govern; if equally specific, the more restrictive shall govern.

2230. **Table of Use Regulations.** See Appendix A.

(Ord. of 12-23-03, § 1)

2300. - ACCESSORY BUILDINGS AND USES.

2310. **General.** Any use permitted as a principal use is also allowed as an accessory use, as are others customarily accessory and incidental to permitted principal uses. Accessory uses are permitted only in accordance with lawfully existing principal uses. An accessory use may not, in effect, convert a principal use to a use not permitted in the zoning district in which it is located. Where a principal use is permitted under special permit, its accessory use is also subject to the special permit. In all instances where site plan review and approval is required for a principal use, the addition of any new accessory use to the principal use, where such addition exceeds the thresholds established in Section 5400, shall also require site plan review and approval.

APPENDIX A - TABLE OF PRINCIPAL USE REGULATIONS
DISTRICTS

Principal Use	Districts											
	RA	RB	RC	RAA	MUB	PB	IA	IB	IC	WI	KHTOD	
A. Residential												
1. Single-family dwelling	Y	Y	Y	Y	Y	N	N	N	N	N	N	N
2. Two-family dwelling	N	Y	Y	N	Y	N	N	N	N	N	N	N
3. Multi-family townhouse (3 stories)	N	N	Y	N	Y	N	N	N	N	N	N	Y
4. Multi-family garden style (4 stories)	N	N	N	N	N	N	N	N	N	N	N	Y
5. Multi-family mixed use (6 stories)	N	N	N	N	PB	PB	N	N	N	N	N	Y
6. Multi-family mid-rise (12 stories)	N	N	N	N	N	N	N	N	N	N	N	PB
7. Multi-family high-rise (18 stories)	N	N	N	N	N	N	N	N	N	N	N	N
8. Boarding house	N	N	BA	N	BA	N	N	N	N	N	N	N
9. Group residence	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA
10. Assisted or Independent living facility	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA
11. Nursing or Convalescent home	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA
12. Trailer camp or park	N	N	N	N	N	N	N	N	N	N	N	N
13. Hoofed animals	N	N	N	N	N	Y	N	N	N	N	N	N
14. Animals or head of poultry, not to exceed one animal or head of poultry per one thousand (1,000) square feet of net area of the lot. Net area shall be determined by subtracting the gross ground floor area of all buildings and structures on the lots from the gross area of the lot plus any contiguous lots owned by the same party.	Y	Y	Y	Y	Y	Y	N	N	N	N	N	N

19. Motor vehicle general repairs	N	N	N	N	N	CC	CC	N	CC	N	Y	N
20. Motor Vehicle body repairs	N	N	N	N	N	N	N	CC	N	CC	N	N
21. Motor vehicle light service	N	N	N	N	N	CC	CC	CC	N	CC	N	N
22. Restaurant	N	N	N	N	N	Y	Y	Y	N	SP	Y	Y
23. Restaurant, fast-food	N	N	N	N	N	BA	BA	BA	N	N	BA	BA
24. Business or professional office	N	N	N	N	N	Y	Y	Y	N	Y	Y	Y
25. Medical offices, center, or clinic	N	N	N	N	N	BA	BA	BA	N	BA	BA	Y
26. Bank, financial agency	N	N	N	N	N	Y	Y	Y	N	Y	Y	Y
27. Indoor commercial recreation	N	N	N	N	N	Y	Y	Y	N	N	Y	Y
28. Outdoor commercial recreation	N	N	N	N	N	BA	BA	BA	N	BA	BA	BA
29. Wireless Communications Facilities	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB
30. Theatres and auditoriums	N	N	N	N	N	PB	PB	N	N	N	N	PB
31. Convention Centers	M	M	M	M	M	PB	PB	PB	PB	PB	N	PB

	RA	RB	RC	RAA	MUB	PB	IA	IB	IC	WI	KHTOD
D. Industrial											
1. Earth removal	N	N	N	N	N	N	N	N	N	N	N
2. Manufacturing	N	N	N	N	N	N	Y	Y	Y	Y	N
3. Light manufacturing	N	N	N	N	N	N	Y	Y	Y	Y	Y
4. Research, development or testing laboratories and facilities	N	N	N	N	Y	Y	Y	Y	Y	Y	Y

5. Biotechnology facilities	N	N	N	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
6. Medical devices manufacturing	N	N	N	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
7. Fish processing	N	N	N	N	N	N	N	N	N	N	N	Y	Y	N	N	N	N
8. Wholesale, warehouse, self-storage mini-warehouse, or distribution facility	N	N	N	N	N	N	N	Y	Y	Y	Y	Y	Y	N	N	N	N
9. Transportation terminal	N	N	N	N	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
10. Water freight terminal	N	N	N	N	N	N	N	N	N	N	N	Y	Y	N	N	N	N
11. Businesses engaged in the sale, distribution or storage of grain, petroleum products, building materials and industrial machinery provided that such businesses shall be primarily reliant upon a waterfront location or shall be in direct support of an industrial use which requires a waterfront location							N	N	N	N	N	N	Y	N	N	N	N
12. Businesses engaged in the sale, distribution or storage of grain, petroleum products, building materials and industrial machinery	N	N	N	N	N	N	N	CC	N	N	N	N	N	N	N	N	N
13. Businesses engaged in salvaging, dismantling and reprocessing of scrap and waste materials including building materials, motor vehicles, machinery and equipment, paper, rags or any other discarded material, provided that such business shall be primarily reliant upon a waterfront location							N	N	N	N	N	Y	Y	N	N	N	N
14. Junkyard or automobile graveyard	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
15. Contractor's yard	N	N	N	N	N	N	N	Y	Y	N	N	N	N	N	N	N	N
16. Low-level radioactive or nuclear waste facility	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
17. Tire recycling & re-treading	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N

18. Batch asphalt & concrete plants	N	N	N	N	N	N	N	CC	N	N	N
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(Ord. of 12-23-03, § 1; Ord. of 12-8-05, §§ 2-4; Ord. of 3-16-11, § 1; Ord. of 10-8-13, § 2; Ord. of 1-20-15, § 3; Ord. of 3-26-15)

Chapter 9

COMPREHENSIVE ZONING*

- Art. 1. In General, §§ 9-1—9-200
- Art. II. District Regulations, §§ 9-201—9-329
- Div. 1. Generally, §§ 9-201—9-207I
 - Div. 2. Residence "A" Districts, §§ 9-208—9-217
 - Div. 3. Residence "B" Districts, §§ 9-218—9-227
 - Div. 4. Residence "C" Districts, §§ 9-228—9-238
 - Div. 5. Business Districts, §§ 9-239—9-245D
 - Div. 6. Industrial "A" Districts, §§ 9-246—9-252
 - Div. 7. Industrial "B" Districts, §§ 9-253—9-259
 - Div. 8. Industrial "C" Districts, §§ 9-260—9-270
 - Div. 9. Residence "AA" Districts, §§ 9-271—9-281
 - Div. 10. Residence "BB" Districts, Garden Apartment Districts, §§ 9-282—9-295
 - Div. 11. Waterfront Industrial District, §§ 9-296—9-319
 - Div. 12. Special Flood Hazard Areas, §§ 9-320—9-329

ARTICLE I. IN GENERAL

Sec. 9-1. Enforcement—Official designated; conformance for issuance of permits; uses in violation.

- (a) It shall be the duty of the inspector of buildings to enforce the provisions of this chapter.
- (b) No permit shall be issued for the construction, alteration or moving of any building or part thereof unless the plans and intended use indicate that the building and the premises will conform in all respects to the provisions of this chapter.
- (c) It shall be unlawful to use or permit the use of any premises or building or part thereof hereafter constructed, altered or moved, or the yards, courts or other open spaces of the same which may be or are in any way reduced, until the inspector of buildings shall have certified thereto on the building permit or in a use permit that the premises or the building or part thereof so constructed, altered or moved, the proposed use thereof, and the open spaces thereof, conform to the provisions of this chapter. (Code 1963, § 9-266)

*Editor's note—For facility of use and to avoid confusion, the numbering system appearing in the 1963 Code for Title 9, Ch. 2, has been carried forward in Art. II of this chapter, except that former §§ 9-266—9-270, dealing with enforcement, have been moved to Art. I herein, and said section numbers reserved; also former §§ 9-306, 9-307, dealing with airport approach regulations, have been placed in Ch. 3, and the section numbers reserved.

Cross references—Airport zoning, § 3-23 et seq.; building regulations, Ch. 6.
State law references—Zoning Act, M.G.L.A. c. 40A, § 1 et seq.; publication of compilation of zoning ordinances, M.G.L.A. c. 40, § 32B.

enclosing walls, and shall be at least twice as long as its required width or of an equivalent area, but no court shall be less than ten (10) feet in width.

(d) An inner court on a lot line shall have a minimum depth of at least one and one-half (1½) feet for every story above the lowest story served by it, but shall be not less than five (5) feet in depth. The width of such court shall be not less than twice its required depth or of an equivalent area which will serve the same purposes, provided that for each foot that a lot is less than sixty (60) feet wide, two (2) inches may be deducted from the minimum depth, but no court shall be less than five (5) feet deep.

(e) An outer court shall have a minimum width twice as great as the width above prescribed for an inner court.

(f) A cornice or belt course shall not project more than six (6) inches into any inner court.

(g) A corner of a court or yard may be cut off between walls of the same building but the length of the wall of such cutoff shall not exceed seven (7) feet. (Code 1963, § 9-252)

DIVISION 7. INDUSTRIAL "B" DISTRICTS.

Sec. 9-253. Uses.

(a) Within any Industrial "B" district, as indicated on the building zone map, any use otherwise lawful shall be permitted except a building or structure intended or designed to be used in whole or in part for residential purposes or for use as a fish fillet plant or fish processing plant. However, a fish fillet or processing plant shall be allowed in Industrial "B" zoned land within the Working Waterfront Overlay district, defined in section 9-201.

(b) (1) No building shall be erected, altered or converted for the use as a garage or filling station until a permit is issued by the inspector of buildings as provided in section 113.0 of the state building code.

(2) In all cases the plot plans shall be submitted in duplicate for a garage and in quadruplicate for a filling station; one set shall be kept at the building site during the progress of the work; one set on file in the office of the inspector of buildings; and in case of a filling station, one set for the mayor and council and one set for the chief of the fire department.

(3) No site shall be used for filling station purposes and no permit for the erection, alteration or conversion of a building for said purposes shall be issued until the use of said site for filling station purposes has been approved by the city council following a public hearing. Notice of said public hearing shall be given by the inspector of buildings to all abutters of the site involved, by registered mail at least seven (7) days prior to said hearing. The inspector of buildings shall require a return receipt for said mail and all return receipts received by the inspector of buildings shall be

COMPREHENSIVE ZONING

§ 9-255

delivered to the city clerk for filing prior to the date set for said hearing. In all cases where the city council takes favorable action, the same shall be submitted to the mayor for the mayor's approval.

- (4) In all cases where unfavorable action has been taken by the city council on a petition or request for approval of a site for filling station purposes, no new petition or request for approval of the same site, or any portion thereof, shall be received or considered within two (2) years after the date of such unfavorable action.
- (5) No pump, pipe or structure of any kind for the distribution of petroleum products shall henceforth be erected or installed unless there are parking facilities for vehicles to be serviced on private property, and the dispensing of said products over sidewalks and travelled ways by the use of hose, swinging arms or other devices is hereby prohibited, except where such use is absolutely required by installations made prior to August 1, 1946. (Code 1963, § 9-253; Ord. of 4-14-66, § 1; Ord. of 3-24-77, § 3; Ord. of 2-16-78, § 4)

Sec. 9-254. Height.

- (a) No building shall be erected to a height in excess of one hundred (100) feet.
- (b) The provisions of this chapter with regard to a height shall not apply to spires, cupolas, bellies, chimneys, flag or radio poles, gasometers, grain elevators; nor to penthouses enclosing stairs or elevators, water tanks, or scenery lofts occupying an aggregate area of twenty-five (25) per cent or less of the ground area of the building; nor to towers which may occupy twenty-five (25) per cent or less of the ground area of the building, provided that such towers shall be at every point distant at least twenty-five (25) feet from any lot line and if wider than thirty (30) feet, measured parallel to the street line, shall be at least fifty (50) feet from the middle line of any street.
- (c) A building located on a corner lot may extend along the narrower street for a distance of one hundred fifty (150) feet at a height permitted on the wider street.
- (d) Any building or part of a building fronting on the narrower of two (2) intersecting streets within one hundred (100) feet of the wider street, measured at right angles to the side of the wider street, shall be governed by the height regulations provided for the wider street. (Code 1963, § 9-254)

Sec. 9-255. Setbacks.

No part of any building shall be erected to a height in excess of one and three-quarters (1 $\frac{3}{4}$) times the horizontal distance from its face to the opposite street line, except that a parapet wall may extend above such height not more than three (3) feet. (Code 1963, § 9-255)