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MEMORANDUM

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To Mark Carruolo, Town Planner

From Supriya Kelkar, AICP, LEED AP ND, Senior Urban Planner/ Designer

Date February 27, 2025

Project 23147 – North Smithfield

Subject Substandard Lots Zoning

Cc: Emily Keys Innes, AICP, LEED AP ND, President
David Igliozi, Town Solicitor
Bobbi Moneghan, Assistant Planner

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This memorandum contains the updated text proposed by the Rhode Island legislation **H 6059 SUB A** – Substandard Lots of Record, in its entirety. This is the revised version of the text sent on November 20, 2024, edited according to comments received from Town Staff and the Working “ad hoc” Group and reorganized in a format that the Planning Board and Town Council could approve.

Text that is stricken out (~~for example~~) indicates existing text to be removed from the zoning.

**STATE OF RHODE ISLAND
THE TOWN OF NORTH SMITHFIELD**

AN ORDINANCE TO AMEND

***It is to be Ordained by the Town Council of the Town of North Smithfield,
Rhode Island as follows:***

PROPOSED ZONING FOR SUBSTANDARD LOTS OF RECORD

Ch 340 Pt 2 Non-conforming Uses Art IV Nonconforming Lots, Uses of Land, Structures, Uses of Structures and Premises; Nonconforming Characteristics of Use

49 § 340-2.1. Intent.

(f) A. Within the districts established by this chapter or amendments that may later be adopted there exist lots, structures, uses of land and structures, and characteristics of use which were lawful before this chapter was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this chapter or future amendment. It is the intent of this chapter to permit these preexisting nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this chapter that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or of uses prohibited elsewhere within the same district. This provision shall not apply to the expansion, extension or enlargement of residential structures located in residential districts which comply with the setback regulations contained in the District Regulation Table - Section 340 Attachment 3. Any expansion, extension or enlargement of a residential structure that does not comply with the setback regulations shall be required to apply a modification request under §340-5.21 or a dimensional variance request under §340-5.20, whichever is applicable. for zoning relief may be granted by way of special use permit.

65
66 B. Nonconforming uses are declared by this chapter to be incompatible with permitted uses
67 in the districts involved. A nonconforming use of a structure, a nonconforming use of land,
68 or a nonconforming use of structures and land in combination, shall not be extended or
69 enlarged. ~~after passage of this chapter by attachment on a building or premises of
70 additional signs intended to be seen from off the premises, or by the addition of other
71 uses, of a nature which would be prohibited generally in the district involved.~~

73 C. To avoid undue hardship, nothing in this chapter shall be deemed to require a change in
74 the plans, construction, or designated use of any building on which actual construction
75 was lawfully begun prior to the effective date of adoption or amendment of this chapter
76 and upon which actual building construction has been carried on. "Actual building
77 construction" is hereby defined to include the placing of construction materials in
78 permanent position and fastened in a permanent manner. Where excavation or
79 demolition or removal of an existing building has been substantially begun preparatory to
80 rebuilding, such excavation or demolition or removal shall be deemed to be actual

81 building construction. All work shall be completed within two years after the passage of
82 this chapter.
83

84 §340-2.2 Nonconforming Lots of Record.

85 **Existing Text:** In any district in which single-family dwellings are permitted, a single-family dwelling
86 and customary accessory buildings may be erected on any individual lot of record, which at the
87 time of its creation was in conformance with the zoning ordinance then in effect, notwithstanding
88 limitations imposed by other provisions of this chapter, under the following conditions.
89 Such lots must be in separate ownership and not of contiguous frontage with other lots in the same
90 ownership ~~This provision shall apply even though such lot fails to meet the requirements for area~~
91 ~~or width, or both, that are generally applicable in the district, provided that yard dimensions and~~
92 ~~requirements other than those applying to area or width, or both, of the lot shall conform to the~~
93 ~~regulations for the district in which such lot is located. Variance of yard requirements shall be~~
94 ~~obtained only through action of the Board.~~

95

96 **Replace cancelled text with the suggested text:**

97 A. Notwithstanding the failure of a single nonconforming lot of record or contiguous lots of record
98 to meet the dimensional and /or quantitative requirements of this zoning ordinance, and/or
99 road frontage or other access requirements applicable to the district as stated in the
100 ordinance, a nonconforming lot of record shall not be required to seek any zoning relief based
101 solely on the failure to meet minimum lot size requirements of the district in which such lot is
102 located.

103 (1) Minimum building setbacks, lot frontage and lot width requirements for a lot which is
104 nonconforming in area shall be reduced by applying the building setback, lot frontage, and
105 lot width requirements from another zoning district in which the subject lot would be
106 conforming as to lot area. If the subject lot is not conforming as to lot area in any zoning
107 district, the setbacks, lot frontage, and lot width shall be reduced by the same proportion
108 that the area of such substandard lot meets the minimum lot area of the district in which
109 the lot is located.

110 (2) Maximum lot building coverage for lots that are nonconforming in area shall be increased
111 by the inverse proportion that the area of such substandard lot meets the minimum area
112 requirements in the district in which the lot is located.

113 (3) All proposals exceeding such reduced requirement shall proceed with a modification
114 request under §340-5.21 or a dimensional variance request under §340-5.20 whichever is
115 applicable.

116 **§ 340-2.3. Merger of multiple abutting nonconforming lots of record.**

117

118 A. If two or more abutting lawfully established nonconforming lots in single ownership,
119 which are located in the REA-120, RA-65, RS-40, and RU-20 Zoning Districts, do not meet
120 if all or part of the requirements established for lot frontage, width or area, said lots shall
121 be deemed to be merged and shall be considered as an individual lot and no portion of
122 said lot shall be used or sold in a manner which diminishes compliance with lot width,
123 frontage and area requirements established by this chapter, nor shall any division of any
124 parcel be made which creates a lot with frontage or area below requirements stated in
125 this chapter.

126 B. **Merger exemption.** The merger of lots shall not be required when the substandard lot of
127 record has an area equal to or greater than the area of fifty percent (50%) of the lots within
128 two hundred feet (200 ft) of the subject lot, as confirmed by the zoning enforcement officer
129 following receipt of a plan certified by a Rhode Island Professional Engineer (PE) or a Rhode
130 Island Registered Professional Land Surveyor (PLS), indicating that fifty percent (50%) or

131 more of the lots within two hundred feet (200 ft) of the subject lot have areas equal to or
132 less than that of the subject lot.

133 NOTE: Lot mergers are allowed if the standards for each zoning district are clearly outlined. These
134 rules consider criteria like infrastructure available, the neighborhood's character, and how well
135 the merger fits with the Town's long-term plan.

136 § 340-2.4. Nonconforming uses of land. [Amended at time of adoption of Code (see Ch. 1, General
137 Provisions, Art. III)]

138 Where, at the time of passage of this chapter, or an amendment thereto, lawful use of land exists
139 which would not be permitted by the regulations imposed by this chapter, the use may be
140 continued so long as it remains otherwise lawful, provided:
141

142 A. No such nonconforming use shall be enlarged or increased, nor extended to occupy a
143 greater area of land than was occupied at the effective date of adoption or amendment of
144 this chapter.

145 B. No such nonconforming use shall be moved in whole or in part to any portion of the lot or
146 parcel other than that occupied by such use at the effective date of adoption or
147 amendment of this chapter.

148 C. ~~Abandonment of a nonconforming use shall consist of some overt act, or failure to act, which would lead one to believe that the owner of the nonconforming use neither claims nor retains any interest in continuing the nonconforming use unless said owner can demonstrate an intent not to abandon the use. An involuntary interruption of nonconforming use, such as by fire and natural catastrophe, does not establish the intent to abandon the nonconforming use. However, if any nonconforming use is halted for a period of one year, the owner of such nonconforming use will be presumed to have abandoned such nonconforming use, unless such presumption is rebutted by presentation of sufficient evidence of intent not to abandon the use.~~

149 D. C. No additional structures ~~not conforming to the requirements of this chapter~~ shall be
150 erected in connection with such nonconforming use of land.

151 § 340-2.5. Nonconforming structures.

152 Where a lawful structure exists at the effective date of adoption or amendment of this chapter that
153 could not be built under the terms of this chapter by reason of restrictions related to ~~on areas, lot~~
154 ~~coverage, height, yards, its location on the lot, or other dimensional requirements concerning the~~
155 ~~structure~~, such structure may be continued, so long as it remains otherwise lawful, subject to the
156 following provisions:
157

158 A. No such nonconforming structure may be enlarged or altered in a way which increases its
159 nonconformity, but any structure or portion thereof may be altered to decrease its
160 nonconformity.

161 B. ~~An involuntary interruption of a nonconforming structure, such as by fire and natural catastrophe, does not establish the intent to abandon the nonconforming structure. However, if any nonconforming structure is vacant for a period of one year, the owner of such nonconforming structure will be presumed to have abandoned such nonconforming structure, unless such presumption is rebutted by presentation of sufficient evidence of intent not to abandon the structure.~~

182
183 C. B. Should such a structure be moved for any reason for any distance ~~whatever~~, it shall
184 thereafter conform to the regulations for the district in which it is located ~~after it is moved~~.
185
186 § 340-2.6. Nonconforming uses of structures or structures and premises in combination.
187
188 Where ~~if~~ a lawful use involving individual structures or of structure and premises, in combination,
189 exists at the effective date of adoption or amendment of this chapter, that would not be allowed in
190 the district under the terms of this chapter, the lawful use may be continued so long as it remains
191 otherwise lawful, subject to the following provisions:
192
193 A. No existing structure devoted to a use not permitted by this chapter in the district in which
194 it is located shall be enlarged, extended, constructed, reconstructed, moved, or
195 structurally altered except in changing the use of the structure to a use permitted in the
196 district in which it is located. ~~Alterations to remove code violations shall be permitted.~~
197
198 B. Any nonconforming use may be extended throughout any parts of a building which were
199 manifestly arranged or designed for such use at the time of adoption or amendment of
200 this chapter, but no such use shall be extended to occupy any land outside such building.
201
202 C. ~~If no structural alterations are made, any nonconforming use of a structure, or structure
203 and premises, may as a special use permit be changed to another nonconforming use,
204 provided that the Board, by making findings of fact in the specific case, shall find that the
205 proposed use is equally appropriate or more appropriate to the district than the existing
206 nonconforming use. In permitting such a change, the Board may require appropriate
207 conditions and safeguards in accord with the provisions of this chapter.~~
208 [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. III)]
209
210 D. ~~Any structure, or structure and land in combination, in or on which a nonconforming use
211 is superseded by a permitted use shall thereafter conform to the regulations for the
212 district, and the nonconforming use may not thereafter be resumed.~~
213
214 E. ~~When a nonconforming use of a structure, or structure and premises in combination, is
215 discontinued or abandoned as in § 340-2.4C, the structure, or structure and premises in
216 combination, shall not thereafter be used except in conformity with the regulations of the
217 district in which it is located.~~
218
219 F. ~~Where nonconforming use status applies to a structure and premises in combination,
220 voluntary removal or destruction of the structure shall eliminate the nonconforming
221 status of the land. "Destruction," for the purpose of this subsection, is defined as damage
222 to an extent of more than 90% of the replacement cost at time of destruction.~~
223
224 § 340-2.7. Repairs and maintenance of nonconforming structures.
225
226 Nothing in this chapter shall be deemed to prevent the performance of normal repair or
227 maintenance work or work necessary to comply with safety codes on a legal nonconforming use or
228 structure.
229
230 A. ~~On any nonconforming structure or portion of a structure containing a nonconforming
231 use, work may be done in any period of 12 consecutive months on ordinary repairs or on
232 repair or replacement of nonbearing walls, fixtures, wiring, or plumbing, to an extent not
233 exceeding 10% of the current replacement cost of the nonconforming structure or~~

234 ~~nonconforming portion of the structure, as the case may be, provided that the cubic~~
235 ~~content existing when it became nonconforming shall not be increased.~~

236
237 ~~B. Nothing in this chapter shall be deemed to prevent the performance of normal repair or~~
238 ~~maintenance work or work necessary to comply with safety codes on a legal~~
239 ~~nonconforming use or structure.~~

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241 § 340-2.8. Uses under special use permit and variance provisions.

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243 Any use which has been or is permitted by special use permit or variance in a district under the
244 terms of this chapter ~~(other than a change through Board action from a nonconforming use to~~
245 ~~another use not generally permitted in the district)~~ shall not be deemed a nonconforming use in
246 such district, but shall without further action be considered a use by special use permit or a use by
247 variance and shall require further action of the Board for any changes in uses.

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249 § 340-2.9 Abandonment of nonconforming uses.

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251 Abandonment of a nonconforming use shall consist of some overt act, or failure to act, which would
252 lead one to believe that the owner of the nonconforming use neither claims nor retains any interest
253 in continuing the nonconforming use unless said owner can demonstrate an intent not to abandon
254 the use. An involuntary interruption of nonconforming use, such as by fire and natural catastrophe,
255 does not establish the intent to abandon the nonconforming use. However, if any nonconforming
256 use is halted for a period of one year, the owner of such nonconforming use will be presumed to
257 have abandoned such nonconforming use, unless such presumption is rebutted by presentation of
258 sufficient evidence of intent not to abandon the use.

259
260 Any nonconforming use which has been changed ~~is superseded by~~ to a permitted use shall
261 thereafter conform to the regulations for the district, and the nonconforming use may not thereafter
262 be resumed.