

Non-Conforming Uses

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1. The purpose of non-conforming lot, use, etc. provisions in Zoning Ordinances is not to continue to permit development on lots at densities or with uses that are inconsistent with Master Plan policies. Rather they are to transition development to appropriate densities and related lot sizes and land uses that are consistent with the Master Plan. For example smaller lots that cannot accommodate a septic system typically are non-conforming and should be brought into conformance to protect public health, safety and welfare, e.g., eliminate water pollution from inadequate septic systems.

2. Standards for development and in turn defining what is a non-conforming lot, density, uses, etc., must begin with the Master Planning process. This process considers where growth is to be accommodated, how much (density via setting minimum lot sizes), type of growth, timing of development, and how fiscal impacts will be mitigated. Answering these questions is based on environmental characteristics (e.g. soils, steep slopes, water pollution or quality levels, etc.), population growth demands, need for housing, access to transportation, impact on schools, and other municipal facilities, etc.

Note: These standards may be based on more than just the minimum lot size to accommodate a septic system. They may also include additional lot area to limit density in a vicinity to protect other natural resources, limit traffic, limit fiscal impacts, etc. The Master Plan should document these standards.

3. Based on this process, some lots should not be developed until they are brought into conformity. This is no different than if a building code changes and an owner is required to update the construction or electrical wiring to conform to new safety requirements, etc. Hence, the inclusion of non-conforming zoning provisions.

4. Extending non-conforming conditions only delays meeting overall Master Plan goals.

5. Even if permitted, I recommend setting an amortization period so if an owner invests, they know

going in that there is a defined period when conformance will be required, e.g. by some time or when a property is sold.

6. Regarding grandfathering existing lot sizes or uses, this may be a way to transition to conformity. But a grandfather exception period also should have a sunset provision. Unfortunately even great grandfathers do not live forever.

7. Only by stepping back from the immediacy of addressing what to do about a specific lot or respond to political pressure can a rational and logical approach be developed. This is called community planning. Sure there will be pressure due to someone's situation, but there is the bigger issue that impacts the overall community and whether the community indeed reaches its goals.

8. Re: property value and tax impacts, areas that are well planned with balanced growth and protected environmental features will, in the long run, be more valuable and add more overall value than a few additional lots that benefit a few. If the Planning Board were a board of directors of a private company that had a real estate asset value of hundreds of millions of dollars, they would be acting on how to add asset value to all shareholders. Property value is determined by fair market value of comparable property sales. Property sales will indeed be higher with better planned lots and equally responsible managed municipal operating expenses that impact property taxes.

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